

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. CORAZON NAZARENO Y FERNANDEZ @ “CORA” AND JEFFERSON NAZARENO Y FERNANDEZ @ “TOTO,” ACCUSED-APPELLANTS.

G.R. No. 231875. July 29, 2019

Ponente: LAZARO-JAVIER, J.

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LAZARO-JAVIER, J.:

The Case

This appeal assails the Decision[1] dated September 29, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07558 entitled "People of the Philippines v. Corazon Nazareno y Fernandez, et. al, " affirming the trial court's verdict of conviction against appellants Corazon Nazareno y Fernandez and Jefferson Nazareno y Fernandez for violation of Section 5 of Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Proceedings Before the Trial Court

The Charge

By Information[2] dated September 10, 2008, appellants were charged with violation of Section 5 of RA 9165, thus:

That on or about the 8[th] day of September 2008, in the City of Muntinlupa, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding each other, they not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine hydrochloride, a dangerous drug weighing more or less 0.01 gram, contained in One (1) piece of heat-sealed transparent plastic sachet in violation of the above-cited law.

Contrary to law.[3]

The case was raffled to the Regional Trial Court (RTC) - Branch 204, Muntinlupa City.

On arraignment, appellants pleaded not guilty.[4]

At the pre-trial, the prosecution and the defense stipulated on the trial court's jurisdiction, the identity of the accused, the identity of the Forensic Chemist Police Senior Inspector Abraham V. Tecson, and the authenticity of PSI Tecson's report which yielded a positive result for the presence of methylamphetamine hydrochloride in the submitted specimen.[5]

During the trial, PO3 Dennis Bornilla and PO3 Norman Villareal testified for the prosecution. On the other hand, appellants and Ronalie Cruz Frias testified for the defense.

The Prosecution's Version

On September 8, 2008, at 2 o'clock in the afternoon, acting on a confidential informant's report, PO3 Bornilla and PO3 Villareal conducted a surveillance in the area of Purok 1, Block 8, Barangay Bayanan, Muntinlupa City. They determined whether a possible buy-bust operation could be conducted against appellant Corazon Nazareno (Cora) and her son appellant Jefferson Nazareno (Toto).[6]

They coordinated with the Philippine Drug Enforcement Agency (PDEA) for a briefing during which a Pre-operational Report and Certificate of Coordination were issued. PO3 Bornilla was assigned as the poseur-buyer and was given a two hundred (200) peso bill and a one hundred (100) peso bill to be used as marked money. PO3 Villareal was assigned as back-up.[7]

Around 8:30 in the evening, PO3 Bornilla, PO3 Villareal and the confidential informant proceeded to appellants' house. The informant introduced PO3 Bornilla to Toto as a seaman who wanted to buy shabu. When asked, PO3 Bornilla said he wanted to buy shabu worth P300. Toto took the P300 and told PO3 Bornilla to wait. He walked across the street to a store and called out to his mother, Cora. The latter came out and Toto handed the P300 to her. Cora took something from the breast portion of her blouse and gave it to Toto. Toto returned to PO3 Bornilla and handed him a piece of paper which contained a small transparent plastic sachet of suspected shabu. As pre-arranged, PO3 Bornilla reversed his bullcap. PO3 Villareal immediately closed in. PO3 Bornilla accosted Toto and directed PO3 Villareal to arrest Cora. The marked P300 was recovered from Cora. Both appellants were apprised of their constitutional rights and brought to the police station.[8]

At the police station, the seized items were marked "CN," photographed, and inventoried. Following the request for examination, the substance was delivered to the PNP Crime Laboratory in SPD, Makati City for chemical testing. The same yielded positive results for shabu.[9]

The Defense's Version

Appellants denied the charge. They testified that on September 8, 2008 around 5 o'clock in the afternoon, Cora went home after cleaning the Multipurpose Hall of Purok 8. When she noticed it was about to rain, she returned to the Multipurpose Hall to turn off the lights. On her way back, two (2) men later identified as PO3 Bornilla and PO3 Villareal alighted from a vehicle and introduced themselves to her as police officers. They invited her to the police station for questioning. When she refused, they shoved her into their parked vehicle. They informed her of the report they received regarding her business of peddling drugs in the area.[10]

Toto was at home with his wife and son on September 8, 2008 when someone suddenly kicked their door open, introduced themselves as police officers, dragged him out of the house, and forced him and Cora into a parked vehicle.[11]

At the police station, the police officers asked for the names of their relatives whom they can talk to regarding "settlement." [12] They did not yield. Their fingerprints and photographs were taken and they were told that if no one would come to help, they would be charged.[13]

Ronalie Frias corroborated appellants' testimonies. She saw men accost Cora and Toto.[14]

The Trial Court's Ruling

As borne by its Decision[15] dated March 26, 2015, the trial court rendered a verdict of conviction, viz:

WHEREFORE, premises considered and finding the accused, GUILTY beyond reasonable doubt of the crime herein charged, CORAZON NAZARENO y FERNANDEZ @ CORA and JEFFERSON NAZARENO y FERNANDEZ are hereby sentenced to Life Imprisonment and to pay a fine of Php500,000.00 each.

The subject drug evidence is ordered transmitted to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in their favor.

Accused CORAZON NAZARENO is ordered committed to the Correctional Institute for Women for the service of her sentence pending any appeal she may file in this case.

Accused JEFFERSON NAZARENO is ordered detained at the New Bilibid Prisons (NBP) pending any appeal that he may file in this case.

SO ORDERED.[16]

The trial court found the testimony of PO3 Bornilla and PO3 Villareal credible, straightforward, and consistent on material points showing that both accused were engaged in selling drugs. It disregarded appellants' defense of denial over the positive testimonies of the prosecution witnesses.

The Proceedings Before the Court of Appeals

On appeal, petitioner faulted the trial court for rendering the verdict of conviction despite the supposed illegality of their warrantless arrests and the prosecution's failure to establish the corpus delicti.[17]

In refutation, the Office of the Solicitor General (OSG) through Assistant Solicitor General Herman R. Cimafranca and State Solicitor Sharon E. Millan-Decano defended the verdict of conviction. According to the OSG, it was sufficiently established that petitioner was caught in flagrante delicto selling shabu to a law enforcement agent who posed as a buyer. The laboratory results supported this conclusion. The police officers were not shown to have been impelled by improper motive to falsely testify against appellants. Further, appellants never objected to the supposed irregularity of their arrest prior to their arraignment. The buy-bust team also substantially complied with the provisions of Section 21 of RA 9165.

The Court of Appeals' Ruling

The Court of Appeals[18] affirmed through its assailed Decision dated September 29, 2016. It accorded the testimonies of the prosecution witnesses a high degree of respect. It found that there was substantial compliance with Rule 21 of RA 9165 when it marked the seized items in the police station and that the absence of a member of the media or DOJ did not by itself render the seized items inadmissible. Especially when, as in this case, the chain of custody was established and the integrity of the seized shabu was found to have remained intact.

The Present Appeal

Appellants now seek affirmative relief from the Court and plead anew for their acquittal.

For the purpose of this appeal, both appellants and the People adopted, in lieu of supplemental briefs, their respective briefs filed before the Court of Appeals.

Issue

Did the Court of Appeals err when it affirmed appellants' conviction for violation of Section 5 (illegal sale of dangerous drugs) of Art. II of RA 9165?

Ruling

At the outset, appellants assail the warrantless arrest and patent inadmissibility of the evidence against them.

The appellants' arrest was valid

On this score, Section 5 of Rule 113 of the Rules on Criminal Procedure provides instances when warrantless arrest may be affected, thus:

Sec. 5 Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

xxx xxx xxx

Here, appellants were arrested during a buy-bust operation where they were caught in flagrante delicto selling shabu. In *People v. Rivera*[19] the Court reiterated the rule that an arrest made after an entrapment operation does not require a warrant inasmuch as it is considered a valid warrantless arrest, in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court. A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. In a buy-bust operation, the idea to commit a crime originates from the offender, without anybody inducing or prodding him to commit the offense. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation deserves judicial sanction.

Consequently, appellant's warrantless arrest validly conformed with Section 5 of Rule 113 of the Rules on Criminal Procedure.

Further, appellants are estopped from questioning the validity of their warrantless arrest. Appellants never objected to the irregularity of their arrest before their arraignment. They pleaded not guilty to the offense on arraignment and actively participated in the proceedings which followed. In fact, during the pre-trial, they stipulated that the court had jurisdiction over them. Thus, they are considered to have voluntarily submitted themselves to the jurisdiction of the trial court and waived their right to question the validity of their arrest.[20]

The buy-bust team failed to comply with the three (3) witness requirement of Section 21 of RA 9165

In illegal drugs cases, the drug itself constitutes the corpus delicti of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.[21]

The case is governed by RA 9165 prior to its amendment in 2014. Section 21 of RA 9165 prescribes the standard in preserving the corpus delicti in illegal drug cases, viz:

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 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; (emphasis added)

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The Implementing Rules and Regulations of RA 9165 further commands:

Section 21. (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. (emphases added)

As required, the physical inventory and photograph of the seized or confiscated drugs immediately after seizure or confiscation shall be done in the presence of the accused, a media representative, a representative from the Department of Justice (DOJ), and any elected local official.

The saving clause under Section 21 (a) of RA 9165 commands that non-compliance with the prescribed requirement shall not invalidate the seizure and custody of the items provided that: 1) such non-compliance is justified; and 2) the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers. More, the justifiable ground for non-compliance must be proven as a fact because the Court cannot presume what these grounds are or that they even exist.[22]

Here, PO3 Villareal testified:

Q: After you arrested Cora and Toto, what did you do next?

A: We went back to our office, sir.

Q: Are you saying you did not conduct inventory in the area?

THE COURT:

Let him explain, (sic)

A: We do not want to have commotion in the area, sir.

XXXX

Q: At the inventory, you do (sic) not have any media?

A: Yes, sir.

Q: Or any representative from the Department of Justice?

A: Yes, sir.[23]

Based on PO3 Villareal's testimony, the inventory and photograph were not done before any media representative or representative from the DOJ.

In *People vs. Lim*, [24] the importance of the presence of the three insulating witnesses was stressed and that when they are absent, the prosecution must allege and prove the reasons for their absence and earnest efforts to secure their attendance must be shown. The reason is simple, it is at the time of arrest or at the time of the drugs' seizure and confiscation that the presence of the three (3) witnesses is most needed. It is their presence at that point that would insulate against the police practice of planting evidence.[25]

Here, the prosecution failed to acknowledge the absence of the representatives from media and DOJ, let alone, offer any explanation therefor. In fact, the prosecution was conspicuously silent on this point. Hence, considering the prosecution neither acknowledged nor explained its non-compliance with Section 21 of RA 9165, the saving clause was not triggered. Accordingly, there is no point anymore in determining if the integrity and evidentiary value of the seized illegal drugs had been satisfied.[26]

The presumption of regularity in the performance of official functions[27] cannot substitute for compliance with the standard in preserving the corpus delicti in illegal drug cases. It is a mere disputable presumption that cannot prevail over clear and convincing evidence to the contrary.[28] And here, the presumption was amply overturned, nay, overthrown by the absence of two of the requisite insulating witnesses sans any justifiable reason.

The Court, in a plethora of cases, has repeatedly stressed that the presence of the required insulating witnesses at the time of the inventory is mandatory, and that their presence serves both a crucial and a critical purpose. Indeed, the absence of the insulating witnesses casts serious doubts upon the integrity of the corpus delicti itself, and for that reason imperils and jeopardizes the prosecution's case.[29] So must it be.

ACCORDINGLY, the appeal is GRANTED. The Decision dated September 29, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07558 is REVERSED AND SET ASIDE. Appellants Corazon Nazareno y Fernandez @ "Cora" and Jefferson Nazareno y Fernandez @ "Toto" are ACQUITTED of violation of Section 5, Article II of Republic Act No. 9165.

The Court further DIRECTS: (a) the Superintendent of the Correctional Institution for Women, Mandaluyong City and the Superintendent of the New Bilibid Prison, Muntinlupa City to cause the immediate release of Corazon Nazareno y Fernandez @ "Cora" and Jefferson Nazareno y Fernandez @ "Toto" from custody, respectively, unless they are being held for some other lawful cause; and (b) to inform the Court of the action taken within five (5) days from notice.

Let entry of judgment immediately issue.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and J. Reyes, Jr., JJ., concur.

[1] Penned by Associate Justice Renato C. Francisco with Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Danton Q. Bueser, concurring, CA rollo, pp. 116-131.

[2] Record, p. 1

[3] Id.

[4] Id. at 34.

[5] Id. at 64-66.

[6] TSN, March 20, 2009, p. 6.

[7] Id. at 7-11.

[8] Id. at 11-17.

[9] Id. at 19-21.

[10] TSN, June 6, 2012, pp. 3-8.

[11] TSN, October 31, 2012, pp. 5-8.

[12] TSN, June 6, 2012, pp. 12-13.

[13] Id. at 12.

[14] TSN, August 27, 2014, pp. 5-7.

[15] Record, pp. 334-345. Penned by Presiding Judge Juanita T. Guerrero.

[16] Id. at 344-345.

[17] CA Rollo, pp. 39-45

[18] Penned by Associate Justice Renato C. Francisco and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser. Supra note 1.

[19] 790 Phil 770, 780 (2016).

[20] See Villanueva v. People, 747 Phil. 40, 46 (2014).

[21] People v. Barte, 806 Phil. 533, 542 (2017).

[22] See People v. Jugo, G.R. No. 231792, January 29, 2018.

[23] TSN, September 18, 2009, pp. 9-10.

[24] G.R. No. 231989, September 4, 2018.

[25] See People v. Ga-ay, G.R. No. 222559, June 6, 2018.

[26] See People v. Ga-ay, G.R. No. 222559, June 6, 2018.

[27] Section 3(m), Rule 131, Rules of Court.

[28] See People v. Cabiles, 810 Phil. 969 (2017).

[29] People v. Manansala, G.R. No. 229509, July 3, 2019.

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