

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ROBERTO ANDRADA Y CAAMPUED, ACCUSED-APPELLANT.

G.R. No. 232299. June 20, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

Before the Court is an appeal from the October 24, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06921, which affirmed the March 4, 2014 Decision[2] of the Regional Trial Court, Branch 90, Dasmariñas, Cavite (RTC), finding accused-appellant Roberto Andrada y Caampued (Andrada) guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The antecedent facts are as follows:

Andrada was indicted for Violation of Section 5, Article II of R.A. No. 9165 in an Information, dated December 27, 2011. The accusatory portion of which reads:

That, on or about the 21[st] day of December, 2011, in Barangay San Miguel I, Dasmariñas City, Province of Cavite, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and knowingly sell, dispose and hand-over to a poseur-buyer one (1) heat-sealed transparent plastic sachet marked as "RAC" with an aggregate weight of 0.03 gram of METHAMPHETAMINE HYDROCHLORIDE locally known as SHABU, a dangerous drug, as confirmed by Chemistry Report No. D-583-11.

CONTRARY TO LAW.

When arraigned, Andrada pleaded not guilty to the charge. After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

As summarized by the Office of the Solicitor General, the People's factual version is as follows:

On December 21, 2011, at around 4:15 o'clock in the afternoon at the Dasmariñas Police Station, an information through a confidential informant was received that an alias Botchok was selling shabu in Barangay San Miguel I. Upon receiving this information, P/Supt. Ulysses Gasmen Cruz ordered the conduct of surveillance operations and a pre-operation report was prepared. PO2 Allan Villanueva thereafter went to the house of appellant Botchok. After the surveillance, they went back to the police station. There, they reported to their chief of police, and prepared the marked money as well as the coordination form to PDEA, Regional Office. Thereafter, they set the buy-bust operation wherein PO2 Villanueva will act as the poseur-buyer with the informant and PO2 Ramos and PO2 Sagucio will serve as back-up. They went back to the house of appellant together with the informant. PO2 Villanueva told appellant that he will buy shabu. Appellant asked how much and PO2 Villanueva responded Five Hundred Pesos (P500.00). PO2 Villanueva handed to him the money and appellant gave to him a small plastic sachet. PO2 Villanueva then introduced himself as a police

officer and arrested him. PO2 Ramos and PO2 Sagucio arrived. PO2 Villanueva marked the small plastic sachet with "RAC" pertaining to the initials of appellant. Thereafter, he gave the seized items to PO3 Uypala who brought it to the PNP Crime Laboratory. The seized item turned out positive of methamphetamine hydrochloride or shabu per Chemistry Report No. D-583-11.[3]

Version of the Defense

The defense, on the other hand, relates Andrada's version of the facts in the following manner:

On December 21, 2011, at around 3:00 o'clock in the afternoon, accused ROBERTO ANDRADA ("Andrada"), a resident of Barangay San Miguel, Dasmariñas City, Cavite was inside his house preparing milk for his child. His live-in partner and his three (3) children were also there. PO2 Sagucio appeared at their door, pointed a gun at him and asked him if he knows a certain "Botchok". When he asked "Bakit po Sir", PO2 Sagucio ordered him to lie face down on the ground and told him "Nagbebenta ka ng shabu". Andrada denied the allegation against him and asked PO2 Sagucio whether he has a warrant. The latter pointed his gun at him and stated that it is his warrant. While Andrada was on the ground, four (4) other police officers entered his house. PO2 Villanueva took Andrada's wallet and cellphone. Later, one of the policemen took out a shabu. Thereafter, he was brought to the Dasmariñas City police headquarters where the police officers accused him of selling shabu, which he vehemently denied.[4]

The RTC Ruling

After trial, the RTC rendered its Decision, dated March 4, 2014, finding accused-appellant guilty beyond reasonable doubt of the crime charged, the dispositive portion of which reads:

WHEREFORE, premises considered, the court finds the accused Roberto Andrada y Caampued guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165, and hereby sentences the accused to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00 as provided for in the same provision. The confiscated illegal drug is hereby ordered destroyed.

Costs against the accused.

SO ORDERED.[5]

According to the RTC, the evidence adduced by the prosecution warranted the conviction of the appellant for the crime of illegal sale of dangerous drugs. The RTC lent credence on the prosecution evidence which established that Andrada was caught in flagrante delicto selling 0.03 gram of shabu at the time he was arrested. It rejected the defense of denial interposed by the appellant because the same was not substantiated by clear and convincing evidence. The RTC ruled that the failure of the arresting officers to strictly observe the procedure laid down in Section 21 of R.A. No. 9165 is of no moment since technical procedure must give way to the need to aptly dispense substantial justice by ridding of incorrigible drugpushers like the accused-appellant.

Not in conformity, Andrada appealed his conviction for illegal sale of dangerous drugs before the CA.

The CA Ruling

On October 24, 2016, the CA rendered its Decision affirming Andrada's conviction, the fallo of which states:

FOR THESE REASONS, the instant appeal is hereby ordered DISMISSED, and the appealed Decision dated 04 March 2014 rendered by Branch 90 of the Regional Trial Court in Dasmariñas, Cavite in Criminal Case N. 9967-12 is AFFIRMED in toto.

SO ORDERED.[6]

The appellate court ruled that the elements of illegal sale of dangerous drugs have been adequately proven by the

prosecution through the credible testimony of PO2 Allan C. Villanueva (PO2 Villanueva), the police officer who acted as the poseur-buyer during the buy-bust operation. The CA declared that contrary to appellant's claim, there were no inconsistencies between PO2 Villanueva's testimony before the RTC and the declarations made by the arresting officers in their Malayang Pagsalaysay ng Pag-Aresto. It held that the police officers have substantially complied with the required procedure in the handling, custody and control of the seized items and that the integrity of the subject shabu remained intact. Lastly, the CA brushed aside Andrada's defenses of denial and frame-up for being self-serving and unsupported by any plausible proof.

Maintaining his plea for exoneration, Andrada filed the present appeal and posited the same assignment of errors he previously raised before the CA, to wit:

I

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SOLD DRUG ITEM.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE INCREDIBLE TESTIMONY OF THE PROSECUTION WITNESS.[7]

In its Resolution[8] dated August 14, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On October 23, 2017, the Office of the Solicitor General filed its Manifestation and Motion[9] praying that it be excused from filing a Supplemental Brief as its Appellee's Brief had sufficiently ventilated the issues raised. On November 8, 2017, the accused-appellant filed a Manifestation (In Lieu of Supplemental Brief)[10] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA in order to avoid being repetitious.

Andrada insists on his acquittal. Essentially, he asserts that the charge of illegal drug deal is a complete fabrication contending that no sufficient evidence was adduced by the prosecution to prove that a legitimate buy-bust operation was conducted against him. He argues that the omission of the police operatives to observe the procedure outlined by Section 21 of R.A. No. 9165, particularly on the taking of photograph and physical inventory of the subject narcotic in the presence of the personalities mentioned in said law, creates serious doubt on the existence of such allegedly confiscated drug.

Andrada assails anew the prosecution evidence for its failure to establish the proper chain of custody of the seized shabu which shed uncertainty on its identity and integrity. He contends that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

The Court's Ruling

Settled is the rule that an appeal in a criminal case throws the whole records of the case open for review and it is the duty of the appellate court to correct, cite and appreciate errors that may be found in the appealed judgment whether they are assigned or unassigned.[11] Given the unique nature of an appeal in a criminal case, an examination of the entire records of the case may be explored for the purpose of arriving at a correct conclusion as the law and justice dictate.

While the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, especially when affirmed by the CA, the same rule admits of exceptions as where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.[12]

The case at bench falls under this exception and, hence, a departure from the general rule is warranted.

After an assiduous review of the records, the Court finds that the prosecution failed to establish the identity and integrity of the 0.03 gram of shabu allegedly confiscated from Andrada due to broken linkages in the chain of custody which thus militates against the finding of guilt beyond reasonable doubt. Accordingly, the appeal is impressed with merit.

Jurisprudence consistently pronounces that for a successful prosecution of an offense of illegal sale of dangerous drugs, the following essential elements must be duly proven: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[13] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence. The narcotic substance itself constitutes the very corpus delicti of the offense and the fact of its existence is vital to sustain a judgment of conviction.[14] Further, in *People v. Gatlabayan*,[15] the Court held that it is of paramount importance that the identity of the dangerous drug likewise be established beyond reasonable doubt; it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. In fine, the illegal drug produced before the court as an exhibit must be the very same substance recovered from the suspect.

Narcotic substances are not readily identifiable, as in fact they are subject to scientific analysis to determine their composition and nature, and are prone to tampering, alteration, or substitution either by accident or otherwise[16] which justifies the Court in imposing a more exacting standard before they could be accepted as evidence. This is where the observance of the chain of custody becomes of paramount importance so as to ensure that the identity and the integrity of the shabu allegedly seized from Andrada is duly preserved. In *People v. Salvador*,[17] the Court wrote:

The integrity and evidentiary value of seized items are properly preserved for as long as the chain of custody of the same are duly established." "Chain of Custody" means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court. Such record of movements and custody of seized item shall include the identity and signature of the person who had temporary custody of the seized item, the date and time when such transfer of custody was made in the course of safekeeping and use in court as evidence, and the final disposition.

Since what is involved in the case at bench is all but a single plastic sachet containing 0.03 gram of shabu, the Court deems it proper that the prosecution must show an unbroken chain of custody over the same in view of the warning in *Mallillin v. People*[18] that the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. The requirement for establishing the chain of custody fulfills the function of ensuring that unnecessary doubts concerning the identity of the evidence are removed.[19]

There are different links that the prosecution must prove in order to establish the chain of custody in a buy-bust operation, namely: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized by the forensic chemist to the court.[20] In order to prove the identity of the dangerous drug beyond reasonable doubt, the prosecution must be able to account for each link in the chain of custody over the same, from the moment it was seized from the accused up to the time it was presented in court as proof of the corpus delicti.[21] It is quite regrettable though that the prosecution in the instant case fell short in satisfying this standard when it opted to

present only one witness, PO2 Villanueva.

Evidence for the prosecution tends to show that the buy-bust operation conducted on December 21, 2011 resulted in Andrada's arrest, as well as in PO2 Villanueva's seizure of one (1) plastic sachet containing white crystalline substance from Andrada. Upon seizure, PO2 Villanueva immediately marked the plastic sachet with "RAC", pertaining to the initials of the appellant, and took custody of the same from the time of such seizure until arrival at the police station. Subsequently, PO2 Villanueva turned it over to the duty investigator, PO3 Renato Uypala (PO3 Uypala), who then delivered it to the PNP Crime Laboratory for a confirmatory test on its contents. This is where the chain breaks.

A perusal of the dorsal portion of the Request for Laboratory Examination, however, reveals that a certain PO2 Camaclang – and not PO3 Uypala – delivered such request and presumably, the seized plastic sachet as well. This immediately puts into question how PO2 Camaclang obtained possession of the confiscated narcotic, which was neither explained by the prosecution through its testimonial and documentary evidence, nor sufficiently addressed by the courts *a quo*. No document or testimony was offered to clarify who PO2 Camaclang is and what was his participation in the chain of custody of the seized shabu. The absence of any adequate explanation on this score creates a substantial gap in the chain of custody of the plastic sachet seized from Andrada.

In addition, the prosecution was silent as to how the specimen was subsequently received at the crime laboratory. No details were offered as to the identity of the person who received the specimen on behalf of the crime laboratory or if the specimen was directly received by Forensic Chemist PSI Oliver B. Dechitan (FC Dechitan) for examination. Lastly, it was not shown how the specimen was handled, preserved and managed before FC Dechitan conducted an examination thereon. The foregoing has undoubtedly compromised the integrity and evidentiary value of the corpus delicti of the crime charged.

We also note that there are nagging questions of post-examination custody that were left unanswered by the prosecution evidence. Particularly, as to who exercised custody and possession of the specimen after the chemical examination and how it was handled, stored and safeguarded pending its offer as evidence in court. Let it be underscored that the probability of the integrity and identity of the corpus delicti being compromised is present in every single time the narcotic substance is being stored or transported, be it from the crime laboratory directly to the court or otherwise. Hence, the prosecution should have presented the custodian officer and anyone else for that matter who may have handled the drug after him. It must be emphasized that the threat of tampering, alteration, or substitution of the corpus delicti still exists during the interim time - from when the specimen was placed under the custody of the evidence custodian until the time it was brought to court. The failure of the prosecution to provide details pertaining to the said post-examination custody of the seized item likewise creates a gap in the chain of custody which, in turn, raises reasonable doubt on the authenticity of the corpus delicti.[22]

Further, the apprehending officers in the instant case failed to observe Section 21, Article II of R.A. No. 9165 which requires that a representative from the media and the Department of Justice, and any elected public official be present during the conduct of a physical inventory and taking of photograph of the seized item/s, and who shall be required to sign copies of the inventory and shall each be given a copy thereof. Under the last paragraph of Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. This saving clause, however, applies only (1) where the prosecution recognized the procedural lapses, and thereafter explained the cited justifiable grounds, and (2) when the prosecution established that the integrity and evidentiary value of the evidence seized had been preserved.[23]

Here, PO2 Villanueva admitted, during his cross-examination, that no barangay officer or any member of the media was present during the inventory. He likewise testified that the photographing of the seized item was made by PO3 Uyypala, who is not a member of the apprehending team. Despite non-observance, the prosecution did not concede such lapse, and did not even tender any token of justification or plausible explanation for it.

On this score, *People v. Sipin*[24] is instructive:

The prosecution bears the burden of proving a valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that during the trial proceedings, it must initiate in acknowledging and justifying any perceived deviations from the requirements of law. Its failure to follow the mandated procedure must be adequately explained, and must be proven as a fact in accordance with the rules on evidence. It should take note that the rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized items. Strict adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering or alteration of evidence.

The presence of the representatives from the media and the Department of Justice, and of any elected public official was precisely necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity.[25] Simply put, their presence was to ensure against planting of evidence and frame-up. The buy-bust team should have observed this procedure if its members genuinely desired to protect the integrity of their operation. Such omission has attached suspicion to the incrimination of the appellant.

At this point, it is worthy to note that Section 1 of Republic Act No. 10640, which amended Section 21 (1) of R.A. No. 9165, now requires only two (2) witnesses to be present during the conduct of the physical inventory and taking of photograph of the seized items, namely: (a) an elected public official; and (b) either a representative from the National Prosecution Service or the media.

It is lamentable that the RTC and even the CA overlooked the significance of the absence of these glaring details in the records of the case but instead focused their deliberations on the warrantless arrest of Andrada in arriving at their respective conclusions. In sustaining the prosecution's case, the RTC and the CA inevitably relied on the evidentiary presumption that official duties had been regularly performed. The courts a quo are mistaken.

The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise.[26] Also, the presumption of regularity in the performance of official duties can be rebutted by contrary proof, being a mere presumption, and more importantly, it is inferior to and could not prevail over the constitutional presumption of innocence.[27] Given the procedural lapse the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, the presumption of regularity in the performance of duties cannot be made.

Viewed in the light of the above disquisitions, the Court finds no further need to discuss and pass upon the merits of Andrada's defense of denial. Well-settled is the rule in criminal law that the conviction of an accused must be based on the strength of the prosecution's evidence and not on the weakness or absence of evidence of the defense.[28] The accused has no burden to prove his innocence, and the weakness of the defense he interposed is inconsequential. He must be acquitted and set free should the prosecution not overcome the presumption of innocence in his favor.

The unjustified and unexplained gaps in the chain of custody of the 0.03 gram of shabu allegedly seized from Andrada create persistent and serious doubt on the identity and integrity of the said dangerous drug. As such, the

guilt of Andrada was not proven beyond reasonable doubt, warranting his acquittal of the crime charged.

WHEREFORE, the appeal is GRANTED. The Court of Appeals Decision dated October 24, 2016 in CA-G.R. CR-HC No. 06921 is hereby REVERSED and SET ASIDE.

Accordingly, accused-appellant Roberto Andrada y Caampued is ACQUITTED of the crime of Violation of Section 5, Article II of Republic Act No. 9165, on reasonable doubt. The Director of the Bureau of Corrections is DIRECTED to CAUSE the IMMEDIATE RELEASE of the accused-appellant, unless the latter is being lawfully held for another cause, and to inform the Court of the date of his release or reason for his continued confinement within five (5) days from notice.

SO ORDERED.

Carpio (Chairperson),[*] Perlas-Bernabe, Caguioa, and A. Reyes, Jr., JJ., concur.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

[1] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes, concurring; rollo, pp. 2-18.

[2] Penned by Judge Perla V. Cabrera-Faller; CA rollo, pp. 56-58.

[3] Id. at 73.

[4] Id. at 46-47.

[5] Id. at 58.

[6] Rollo, p. 17.

[7] CA rollo, p. 43.

[8] Rollo, pp. 24-25.

[9] Id. at 26-28.

[10] Id. at 35-36.

[11] People v. Kamad, 624 Phil. 289, 299 (2010).

[12] People v. Morales, 630 Phil. 215, 228 (2010).

[13] People v. Carlit, G.R. No. 227309, August 16, 2017.

[14] People v. Frondoza, 609 Phil. 188, 198 (2009).

[15] 669 Phil. 240, 252 (2011).

[16] People v. Alcuizar, 662 Phil. 794, 801 (2011).

[17] 726 Phil. 389, 405-406 (2014).

[18] 576 Phil. 576, 588 (2008).

[19] People v. Reyes, 806 Phil. 513, 532 (2016).

[20] Dela Riva v. People, 769 Phil. 872, 886-887 (2015).

- [21] People v. Sumili, 753 Phil. 342, 348 (2015).
- [22] People v. Coreche, 612 Phil. 1238, 1252 (2009).
- [23] People v. Cayas, 789 Phil. 70, 80 (2016).
- [24] G.R. No. 224290, June 11, 2018.
- [25] People v. Mendoza, 736 Phil. 749, 761-762 (2014).
- [26] People v. Holgado, et al., 741 Phil. 78, 96 (2014).
- [27] People v. Magat, 588 Phil. 395, 407 (2008).
- [28] People v. Suan, 627 Phil. 174, 192-193 (2010).

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