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SECOND DIVISION

[G.R. No. 184758, April 21, 2014]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. SONNY SABDULA Y AMANDA, APPELLANT,

D E C I S I O N

BRION, J.:

We review the February 8, 2008 decision[1] of the Court of Appeals (CA) in CA-G.R. CR. H.C. No. 02726, which affirmed the January 29, 2007 decision[2] of the Regional Trial Court (*RTC*), Branch 82, Quezon City. The RTC decision found appellant Sonny Sabdula *y* Amanda guilty beyond reasonable doubt of violating Section 5,[3] Article II of Republic Act (*R.A.*) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002). The trial court imposed on him the penalty of life imprisonment.

THE FACTS

The prosecution charged the appellant with violation of Section 5, Article II of R.A. No. 9165 before the RTC, under an Information that states:

> That on or about the 1st day of February, 2004, 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, 0.10 (zero point ten) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.[4]

The appellant pleaded not guilty to the charge.[5] The prosecution presented Police Officer (*PO*) 2 Bernard Centeno at the trial, while the testimonies of PO3 Joselito Chantengco and PO1 Alan Fortea became the subject of the parties' stipulations. The appellant and Shirley Sabdula, on the other hand, took the witness stand for the defense.

The evidence for the prosecution established that in the morning of February 1, 2004, a confidential informant told the members of the Central Police District (*CPD*) in Baler, Quezon City about the illegal drug activities of one alias "Moneb" at a squatter's area in San Roque II, Quezon City. Acting on this information, operatives of the Station Intelligence and Investigation Branch, Baler Police Station 2, CPD formed a buy-bust team composed of PO2 Centeno (the designated poseur-buyer), POI Fortea, PO2 Rolando Daduya, POI Victor Porte, POI Louise Escarlan and POI

Noel de Guzman.[6]

At around 7:00 p.m., the buy-bust team and the informant went to the target area. When they arrived there, the informant introduced PO2 Centeno as his "*kumpare*" to the appellant. PO2 Centeno asked the appellant if he could "score" two hundred pesos worth of shabu.[7] The appellant responded by taking out a plastic sachet from his pocket, and handing it to PO2 Centeno. PO2 Centeno in turn handed P200.00 to the appellant, and then gave the pre-arranged signal.

As the other members of the buy-bust team were rushing to the scene, PO2 Centeno introduced himself as a police officer and arrested the appellant. Afterwards, he frisked the appellant and recovered the buy-bust money from his right pocket.[8]

The police thereafter brought the appellant to the Baler Police Station 2 for investigation. Upon arrival, PO2 Centeno gave the seized plastic sachet to SPO2 Salinel who, in turn, handed it to PO3 Chantengco who made a request for laboratory examination that PO3 Centeno brought, together with the seized item to the Central Police District Crime Laboratory for analysis.[9] Per Chemistry Report No. D-140-2004 of Engr. Leonard Jabonillo (the forensic chemist), the submitted specimen tested positive for the presence of methylamphetamine hydrochloride (*shabu*).[10]

In his defense, the appellant testified that between 8:00 to 9:00 p.m. on January 29, 2004, he was on board a taxi at C5 Road, Fort Bonifacio, Taguig City, when a group of about five (5) men pointed their guns at him and told him to get out of the vehicle. After he alighted, the armed men told him to board a mobile car[11] and brought him to the Baler Police Station. At the station, the police asked him to remove his clothes, and confiscated his wallet, bracelet, cap and P3 00.00. The police then told him that he would be detained for drug charges and that he would be jailed for 40 years.[12]

Shirley's testimony was summarized by the RTC as follows:

> xxx On February 1, 2004, she was at home when her brother was brought to Precinct 2, Baler[,] Quezon City. On January 29, 2004, at about 11:00 p.m., she received a text message from Allan Fortea, a policeman, telling her to call a certain number if she loves her brother. The next day, at about 8:00 a.m., she called Fortea at the number he gave her. He told her that his brother at Station 2 Baler Quezon City and asked her to produce P2Q0,000.00 as ransom for her brother. She asked him if he could talk to him. He allowed her and her brother to talk and the latter pleaded to her for help and cried. Fortea told her not to talk in their dialect and took the phone. Fortea then told her to see him at SM North Edsa Car Park on January 30, 2004 at 7:00 p.m. Fortea did not come. At about 9:00 p.m., she proceeded to Station 2 and met Fortea. He asked her about the money but she told him she cannot afford it. Her brother was then detained when she failed to give in to the said demand. [13]

The RTC, in its decision dated January 29, 2007, found the appellant guilty beyond reasonable doubt of illegal sale of shabu, and sentenced him to suffer the penalty of life imprisonment. It also ordered the appellant to pay a P500,000.00 fine.

THE CASE BEFORE THE CA

The appellant appealed his conviction to the CA where his appeal was docketed as CA-G.R. CR. H.C. No. 02726. In its decision of February 8, 2008, the CA affirmed the RTC decision.

The CA held that the prosecution successfully established all the elements of illegal sale of shabu: PO2 Centeno, the poseur-buyer, positively identified the appellant as the person who gave him shabu weighing 0.10 gram in exchange for P200.00. The CA also ruled that the buy-bust team were presumed to have performed their duties regularly. It added that the appellant failed to impute improper motive on the part of the arresting officers.

The CA further held that the chain of custody over the seized plastic sachet were properly established, *even if the time of the actual marking of the seized item had not been shown.*

THE PETITION

In his present petition,[14] the petitioner claims that he was not selling drugs when the police arrested him. He adds that his alibi was corroborated by his sister, Shirley. *He also argues that the seized plastic sachet was not properly marked by the police.*

The Office of the Solicitor General (OSG) counters that the police were presumed to have performed their duties in a regular manner. It further maintains that the *chain of custody over the seized drug was not broken*.[15]

THE COURT'S RULING

After due consideration, we resolve to **ACQUIT** the appellant for the prosecution's failure to prove his guilt beyond reasonable doubt.

We restate at the outset the constitutional mandate that an accused shall be presumed innocent until the contrary is proven beyond reasonable doubt. The burden lies with the prosecution to overcome this presumption of innocence by presenting the required quantum evidence; the prosecution must rest on its own merits and must not rely on the weakness of the defense. If the prosecution fails to meet the required evidence, the defense does not even need to present evidence in its own behalf; the presumption prevails and the accused should be declared acquitted.[16]

I. No moral, certainty on the *corpus delicti*

A successful prosecution for the sale of illegal drugs requires more than the perfunctory- presentation of evidence establishing each element of the crime, namely: the identities of the buyer and seller, the transaction or sale of the illegal

drug and the existence of the *corpus delicti.*

In securing or sustaining a conviction under RA No. 9165, the intrinsic worth of these pieces of evidence, especially the identity and integrity of the *corpus delicti,* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.

Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for possession or for drug pushing under RA No. 9165 fails.[17]

a. The 'Marking' Requirement *vis-a-vis* the Chain of Custody Rule

Dangerous Drugs Board Regulation No. 1, Series of 2002 (which implements R.A. No. 9165) defines chain of custody as 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 the receipt in the forensic laboratory, to safekeeping and the presentation in court for identification and eventual destruction.

The Court explained the importance of establishing the chain of custody over the seized drug in the recent case of *People of the Philippines v. Joselito Beran y Zapanta @ "Jose,"*[18] as follows:

> The purpose of the requirement of proof of the chain of custody is to ensure that the integrity and evidentiary value of the seized drug are preserved, as thus dispel unnecessary doubts as to the identity of the evidence. To be admissible, the prosecution must establish by records or testimony the continuous whereabouts of the exhibit, from the time it came into the possession of the police officers, until it was tested in the laboratory to determine its composition, and all the way to the time it was offered in evidence.

Thus, crucial in proving chain of custody is the marking of the seized drugs or other related items immediately after they are seized from the accused. "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Long before Congress passed R.A, No. 9165, this Court has consistently held that failure of the authorities to immediately mark the seized drugs casts reasonable doubt on the authenticity of the *corpus delicti.*

Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they

are disposed of at the end of the criminal proceedings, thus preventing switching, "planting," or contamination of evidence.[19]

The records in the present case do not show that the police marked the seized plastic sachet *immediately upon confiscation, or at the police station*. Nowhere in the court testimony of PO2 Centeno, or in the stipulated testimonies of PO3 Chantengco and PO1 Fortea, did they indicate that the seized item had ever been marked. Notably, the members of the buy-bust team did not also mention that they marked the seized plastic sachet in their *Joint Affidavit of Arrest,*

How the apprehending team could have omitted such a basic and vital procedure in the initial handling of the seized drugs truly baffles and alarms us. We point out that succeeding handlers of the specimen would use the markings as reference. If at the first or the earliest reasonably available opportunity, the apprehending team did not mark the seized items, then there was nothing to identify it later on as it passed from hand to hand. Due to the procedural lapse in the *first link* of the chain of custody, serious uncertainty hangs over the identification of the seized shabu that the prosecution introduced into evidence.

We are not unaware that the seized plastic sachet already bore the markings "*BC 02-01-04*" when it was examined by Forensic Chemist Jabonillo. In the absence, however, of specifics on *how, when* and *where* this marking was done and *who witnessed* the marking procedure, we cannot accept this marking as compliance with the required chain of custody requirement. There was also no stipulation between the parties regarding the circumstances surrounding this marking. We note in this regard that it is not enough that the seized drug be marked; the marking must likewise be made in the presence of the apprehended violator. As earlier stated, the police did not at any time ever hint that they marked the seized drug.

In *Lito Lopez v. People of the Philippines*[20] we acquitted the accused for failure of the police to mark the seized drugs. The Court had a similar ruling in People of the *Philippines v. Merlita Palomares y Costuna*;[21] the Court acquitted the accused for the prosecution's failure to clearly establish the identity of the person who marked the seized drugs; the place where marking was made; and whether the marking had been made in the accused's presence. These recent cases show that the Court will not hesitate to free an accused if irregularities attended the first stage of the chain of custody over the seized drugs.

b. The requirements of paragraph I, Section 21 of Article II of R.A. No. 9165, and its Implementing Rules and Regulations

The required procedure on the seizure and custody of drugs is embodied in Section 21, paragraph 1, Article II of R.A, No, 9165, which states:

> (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