

FIRST DIVISION

[G.R. No. 189980, April 06, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ALBERTO BACUS ALCUIZAR, DEFENDANT-APPELLANT.**

D E C I S I O N

PEREZ, J.:

On appeal is the Decision^[1] of the Court of Appeals affirming the conviction of appellant Alberto Bacus Alcuizar (appellant) by the Regional Trial Court, Branch 17 of Cebu City^[2] in Criminal Case No. CBU-66345 which found him guilty beyond reasonable doubt of illegal possession of dangerous drugs in violation of Section 11, Article II of Republic Act No. 9165.

Appellant was charged with violation of Sections 5 (illegal sale), 6 (maintaining a drug den), 11 (illegal possession) and 12 (illegal possession of dangerous drug paraphernalia) of Republic Act No. 9165 in Criminal Cases Nos. CBU-66343, CBU-66344, CBU-66345 and CBU-66346. He was tried in two (2) separate criminal proceedings. Criminal Cases Nos. CBU-66343 and CBU-66344 went to RTC Branch 15 of Cebu City (RTC Branch 15). The instant appeal involved the joint trial of Criminal Cases Nos. CBU-66345 and CBU-66346 before RTC Branch 17 of Cebu City (RTC Branch 17).

The Information relating to the criminal case appealed from pertains to illegal possession of *shabu* in violation of Section 11 of Republic Act No. 9165, and it reads:

That on or about the 15th day of June, 2003 at about 2:00 o'clock in the afternoon, in *Barangay Awayan*, Municipality of Carcar, Province of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there, willfully, unlawfully, and feloniously have in his possession, custody, and control, the following: twenty-six (26) heat-sealed plastic packets containing white crystalline substance with a total weight of 0.52 grams; one (1) heat-sealed plastic pack containing 10.26 grams of white crystalline substance; two (2) strips of tin foil containing traces of white crystalline powder; and one (1) heat-sealed packet containing 0.02 gram of white crystalline substance, which when subjected to laboratory examination gave positive result for the presence of methamphetamine hydrochloride, a dangerous drug.^[3]

Upon arraignment, appellant pleaded not guilty to the crime charged.

During the pre-trial conference, the defense admitted the genuineness, authenticity and truthfulness of the Forensic Chemistry Report. Both parties thus agreed to dispense with the testimony of the forensic chemist.^[4]

The lone witness for the prosecution, SPO1 Meliton Agadier (SPO1 Agadier), testified on the following facts:

SPO1 Agadier, PO3 Rolando Gantuangco (PO3 Gantuangco), SPO1 Roland Navales (SPO1 Navales), who were all assigned at the Municipality of Carcar Police Station in Cebu City, secured a search warrant^[5] from the court to search the house of appellant on the suspicion that the latter is selling and in possession of *shabu*. On 15 June 2003, they first conducted a buy-bust operation in *Sitio Awayan*. The subject of the operation is appellant.

SPO1 Agadier was standing in a store across the house of appellant. He witnessed the *poseur* buyer hand the marked money to appellant in exchange for one deck of *shabu*.^[6] Upon the consummation of the sale, SPO1 Agadier immediately pursued appellant, who ran to his parents' house where he was eventually caught. After effecting the arrest, SPO1 Agadier and his team went back to the house of appellant to conduct a search.^[7] The items recovered inside appellant's house were one (1) big heat-sealed transparent plastic pack with white crystalline substance believed to be *shabu*, two (2) packs containing thirteen (13) decks each of suspected *shabu*, three (3) disposable lighters, a *tooter*, a tin foil with traces of *shabu* residue, and an improvised lamp.^[8]

SPO1 Agadier related that appellant, appellant's sister-in-law, one *barangay* captain, one *barangay tanod*, and several photographers were present during the implementation of the search warrant.^[9] A receipt of the seized items was prepared and the *barangay* captain, *barangay tanod*, and two (2) photographers were asked to sign the receipt. The seized items were initially in the custody of SPO1 Navales. Upon reaching the police station, SPO1 Navales turned them over to SPO1 Agadier for marking. SPO1 Agadier prepared the request for laboratory examination before turning them over back to SPO1 Navales, who then delivered the items and the request to the Philippine National Police (PNP) Crime Laboratory.^[10] Forensic Chemistry Report No. D-983-03 was issued confirming that the specimen submitted are positive for *shabu*.^[11]

On 24 October 2006, the RTC Branch 15 of Cebu City,^[12] acquitted appellant of the charge of illegal sale of *shabu* and maintaining a drug den in violation of Sections 5 and 6 of Republic Act No. 9165 in Criminal Cases Nos. CBU-66343 and CBU-66344.^[13]

On 20 December 2006, RTC Branch 17 of Cebu City^[14] rendered a Consolidated Judgment acquitting appellant in Criminal Case No. CBU-66346 for illegal possession of drug paraphernalia, but finding him guilty in Criminal Case No. CBU-66345 for illegal possession of *shabu*. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. In Criminal Case No. CBU-66345, the Court finds accused ALBERTO BACUS ALCUIZAR alias "Albie" GUILTY beyond reasonable doubt of the offense charged therein (violation of Section 11 of RA 9165), and hereby sentences him to suffer life imprisonment and a fine of P400,000.00;
2. In Criminal Case No. CBU-66346, accused ALBERTO BACUS ALCUIZAR alias "Albie" is ACQUITTED based on reasonable doubt.
[15]

The trial court held that the prosecution has clearly proven that appellant was guilty of illegal possession of dangerous drugs since the plastic packs of *shabu* were found inside his room. The trial court relied on the presumption that when prohibited drugs are found in a house or building belonging to and occupied by a particular person, such person is in possession of such drugs in violation of the law. Moreover, the trial court dismissed appellant's defense of denial as weak and debunked his claim that the evidence were planted as such was not supported by any evidence on record.^[16]

On appeal, the Court of Appeals affirmed appellant's conviction.

The core issue in this appeal is whether the prosecution was able to establish beyond reasonable doubt the guilt of appellant. Appellant insists on his innocence and imputes to the trial court the following errors:

1. The Honorable Regional Trial Court erred in convicting the accused notwithstanding the failure of the prosecution to prove the very *corpus delicti* of the crime considering that the chain of custody of the same is unreliable;
2. The Honorable Regional Trial Court erred in convicting the accused despite the fact that the said conviction would be tantamount to violation of the constitutional right of the accused against double jeopardy;
3. The Honorable Regional Trial Court erred in convicting the accused by not taking into account some evidences of vital importance like the improper motive on the part of the police officers;
4. The Honorable Regional Trial Court erred [in] convicting the accused in spite of [the] failure of the prosecution to prove with moral certainty the guilt of the accused beyond reasonable doubt.^[17]

The dangerous drug itself, the *shabu* in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under Republic Act No. 9165, 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 under Republic Act No. 9165 fails.^[18]

The chain of custody rule requires that the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.^[19] In *Lopez v. People*^[20] citing *Catuiran v. People*,^[21] this Court held that:

It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Indeed, it is from the testimony of every witness who handled the evidence from which a reliable assurance can be derived that the evidence presented in court is one and the same as that seized from the accused.^[22]

The aforesaid step initiates the process of protecting innocent persons from dubious and concocted searches, and of protecting as well the apprehending officers from harassment suits based on planting of evidence and on allegations of robbery or theft.^[23]

Appellant cites the failure of the police officer to mark the evidence immediately after purportedly taking it from him. This omission, appellant contends, renders the chain of custody dubious.

SPO1 Agadier admitted that he only marked the seized items at the police station. While the rule allows marking of evidence to be done in the nearest police station, this contemplates a case of warrantless searches and seizures.^[24] In this case, the police officers were able to secure a search warrant prior to their operation. SPO1 Agadier did not offer an explanation or a justification on why he did not immediately mark the plastic packs of *shabu* seized inside appellant's house notwithstanding that an inventory receipt was even prepared while the police officers were still inside the house of appellant. They were given sufficient time and opportunity to prepare for its implementation. Thus, failure to comply with the marking of evidence immediately after confiscation constitutes a first gap in the chain of custody.

Appellant also points out the failure of the police officers to give or leave a copy of the inventory receipt upon the accused or any of his family members pursuant to Section 21 of Republic Act No. 9165.

Adherence to the guidelines under Section 21 of Republic Act No. 9165 relating to custody and disposition of confiscated or seized dangerous drugs accounts for a crucial link in the chain of custody rule. It 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 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.

But it was provided further under Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 that non-compliance with the prescribed procedures does not necessarily result in the conclusion that the identity of the seized drugs has been compromised so that an acquittal should follow as long as the prosecution can demonstrate that the integrity and evidentiary value of the evidence seized have been preserved.

SPO1 Agadier narrated that a certain photographer took pictures of the items seized from the house of appellant. However, the photograph/s do not appear on the records nor were they offered by the prosecution as evidence. Thus, the requirement of taking a photograph was not clearly proven. Anent the inventory receipt, while it was prepared and appeared on records, the police officers failed to provide appellant a copy of the inventory receipt. Appellant construed this omission as fatal.

This omission alone is not necessarily fatal to the cause of the prosecution. However, this Court cannot ignore the nagging doubt created in our mind with respect to the *barangay tanod's* testimony pertaining to the inventory receipt which affects the integrity of the *corpus delicti* in general.

He testified:

Q: On June 15, 2003, could you please tell us whether you were there when the police officers of Carcar implemented