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SECOND DIVISION

[G.R. No. 172953, April 30, 2008]

JUNIE MALLILLIN Y. LOPEZ, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

TINGA, J,:

The presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence. Evidence of guilt beyond reasonable doubt and nothing else can eclipse the hypothesis of guiltlessness. And this burden is met not by bestowing distrust on the innocence of the accused but by obliterating all doubts as to his culpability.

In this Petition for Review[1] under Rule 45 of the Rules of Court, Junie Malillin y Lopez (petitioner) assails the Decision[2] of the Court of Appeals dated 27 January 2006 as well as its Resolution[3] dated 30 May 2006 denying his motion for reconsideration. The challenged decision has affirmed the Decision[4] of the Regional Trial Court (RTC) of Sorsogon City, Branch 52[5] which found petitioner guilty beyond reasonable doubt of illegal possession of methamphetamine hydrochloride, locally known as *shabu,* a prohibited drug.

The antecedent facts follow.

On the strength of a warrant[6] of search and seizure issued by the RTC of Sorsogon City, Branch 52, a team of five police officers raided the residence of petitioner in Barangay Tugos, Sorsogon City on 4 February 2003. The team was headed by P/Insp. Catalino Bolanos (Bolanos), with PO3 Roberto Esternon (Esternon), SPO1 Pedro Docot, SPO1 Danilo Lasala and SPO2 Romeo Gallinera (Gallinera) as members. The search--conducted in the presence of *barangay kagawad*

Delfin Licup as well as petitioner himself, his wife Sheila and his mother, Norma--allegedly yielded two (2) plastic sachets of *shabu* and five (5) empty plastic sachets containing residual morsels of the said substance.

Accordingly, petitioner was charged with violation of Section 11,[7] Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, in a criminal information whose inculpatory portion reads:

> That on or about the 4th day of February 2003, at about 8:45 in the morning in Barangay Tugos, Sorsogon City, Philippines, the said accused did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) plastic sachets of methamphetamine hydrochloride [or] "*shabu*" with an aggregate weight

of 0.0743 gram, and four empty sachets containing "*shabu*" residue, without having been previously authorized by law to possess the same.

CONTRARY TO LAW.[8]

Petitioner entered a negative plea.[9] At the ensuing trial, the prosecution presented Bolanos, Arroyo and Esternon as witnesses.

Taking the witness stand, Bolanos, the leader of the raiding team, testified on the circumstances surrounding the search as follows: that he and his men were allowed entry into the house by petitioner after the latter was shown the search warrant; that upon entering the premises, he ordered Esternon and *barangay kagawad* Licup, whose assistance had previously been requested in executing the warrant, to conduct the search; that the rest of the police team positioned themselves outside the house to make sure that nobody flees; that he was observing the conduct of the search from about a meter away; that the search conducted inside the bedroom of petitioner yielded five empty plastic sachets with suspected *shabu* residue contained in a denim bag and kept in one of the cabinets, and two plastic sachets containing *shabu* which fell off from one of the pillows searched by Esternon--a discovery that was made in the presence of petitioner.[10] On cross examination, Bolanos admitted that during the search, he was explaining its progress to petitioner's mother, Norma, but that at the same time his eyes were fixed on the search being conducted by Esternon.[11]

Esternon testified that the denim bag containing the empty plastic sachets was found "behind" the door of the bedroom and not inside the cabinet; that he then found the two filled sachets under a pillow on the bed and forthwith called on Gallinera to have the items recorded and marked.[12] On cross, he admitted that it was he alone who conducted the search because Bolanos was standing behind him in the living room portion of the house and that petitioner handed to him the things to be searched, which included the pillow in which the two sachets of *shabu* were kept;[13] that he brought the seized items to the Balogo Police Station for a "true inventory," then to the trial court[14] and thereafter to the laboratory.[15]

Supt. Lorlie Arroyo (Arroyo), the forensic chemist who administered the examination on the seized items, was presented as an expert witness to identify the items submitted to the laboratory. She revealed that the two filled sachets were positive of *shabu* and that of the five empty sachets, four were positive of containing residue of the same substance.[16] She further admitted that all seven sachets were delivered to the laboratory by Esternon in the afternoon of the same day that the warrant was executed except that it was not she but rather a certain Mrs. Ofelia Garcia who received the items from Esternon at the laboratory.[17]

The evidence for the defense focused on the irregularity of the search and seizure conducted by the police operatives. Petitioner testified that Esternon began the search of the bedroom with Licup and petitioner himself inside. However, it was momentarily interrupted when one of the police officers declared to Bolanos that petitioner's wife, Sheila, was tucking something inside her underwear. Forthwith, a lady officer arrived to conduct the search of Sheila's body inside the same bedroom. At that point, everyone except Esternon was asked to step out of the room. So, it

was in his presence that Sheila was searched by the lady officer. Petitioner was then asked by a police officer to buy cigarettes at a nearby store and when he returned from the errand, he was told that nothing was found on Sheila's body.[18] Sheila was ordered to transfer to the other bedroom together with her children.[19]

Petitioner asserted that on his return from the errand, he was summoned by Esternon to the bedroom and once inside, the officer closed the door and asked him to lift the mattress on the bed. And as he was doing as told, Esternon stopped him and ordered him to lift the portion of the headboard. In that instant, Esternon showed him "sachet of shabu" which according to him came from a pillow on the bed.[20] Petitioner's account in its entirety was corroborated in its material respects by Norma, *barangay kagawad* Licup and Sheila in their testimonies. Norma and Sheila positively declared that petitioner was not in the house for the entire duration of the search because at one point he was sent by Esternon to the store to buy cigarettes while Sheila was being searched by the lady officer.[21] Licup for his part testified on the circumstances surrounding the discovery of the plastic sachets. He recounted that after the five empty sachets were found, he went out of the bedroom and into the living room and after about three minutes, Esternon, who was left inside the bedroom, exclaimed that he had just found two filled sachets.[22]

On 20 June 2004 the trial court rendered its Decision declaring petitioner guilty beyond reasonable doubt of the offense charged. Petitioner was condemned to prison for twelve years (12) and one (1) day to twenty (20) years and to pay a fine of P300,000.00.[23] The trial court reasoned that the fact that *shabu* was found in the house of petitioner was *prima facie* evidence of petitioner's *animus possidendi* sufficient to convict him of the charge inasmuch as things which a person possesses or over which he exercises acts of ownership are presumptively owned by him. It also noted petitioner's failure to ascribe ill motives to the police officers to fabricate charges against him.[24]

Aggrieved, petitioner filed a Notice of Appeal.[25] In his Appeal Brief[26] filed with the Court of Appeals, petitioner called the attention of the court to certain irregularities in the manner by which the search of his house was conducted. For its part, the Office of the Solicitor General (OSG) advanced that on the contrary, the prosecution evidence sufficed for petitioner's conviction and that the defense never advanced any proof to show that the members of the raiding team was improperly motivated to hurl false charges against him and hence the presumption that they had regularly performed their duties should prevail.[27]

On 27 January 2006, the Court of Appeals rendered the assailed decision affirming the judgment of the trial court but modifying the prison sentence to an indeterminate term of twelve (12) years as minimum to seventeen (17) years as maximum.[28] Petitioner moved for reconsideration but the same was denied by the appellate court.[29] Hence, the instant petition which raises substantially the same issues.

In its Comment,[30] the OSG bids to establish that the raiding team had regularly performed its duties in the conduct of the search.[31] It points to petitioner's incredulous claim that he was framed up by Esternon on the ground that the

discovery of the two filled sachets was made in his and Licup's presence. It likewise notes that petitioner's bare denial cannot defeat the positive assertions of the prosecution and that the same does not suffice to overcome the *prima facie* existence of *animus possidendi*.

This argument, however, hardly holds up to what is revealed by the records.

Prefatorily, although the trial court's findings of fact are entitled to great weight and will not be disturbed on appeal, this rule does not apply where facts of weight and substance have been overlooked, misapprehended or misapplied in a case under appeal.[32] In the case at bar, several circumstances obtain which, if properly appreciated, would warrant a conclusion different from that arrived at by the trial court and the Court of Appeals.

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty, together with the fact that the same is not authorized by law. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction.[33] Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt.[34] Be that as it may, the mere fact of unauthorized possession will not suffice to create in a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[35]

As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.[36] 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.[37]

While testimony about a perfect chain is not always the standard because it is almost always impossible to obtain, an unbroken chain of custody becomes indispensable and essential when the item of real evidence is not distinctive and is not readily identifiable, or when its condition at the time of testing or trial is critical, or when a witness has failed to observe its uniqueness.[38] The same standard likewise obtains in case the evidence is susceptible to alteration, tampering, contamination[39] and even substitution and exchange.[40] In other words, the exhibit's level of susceptibility to fungibility, alteration or tampering--without regard to whether the same is advertent or otherwise not--dictates the level of strictness in the application of the chain of custody rule.

Indeed, 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.[41] *Graham vs. State*[42] positively acknowledged this danger. In that case where a substance later analyzed as heroin--was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession--was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.[43]

A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature. The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases--by accident or otherwise--in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied, a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

A mere fleeting glance at the records readily raises significant doubts as to the identity of the sachets of *shabu* allegedly seized from petitioner. Of the people who came into direct contact with the seized objects, only Esternon and Arroyo testified for the specific purpose of establishing the identity of the evidence. Gallinera, to whom Esternon supposedly handed over the confiscated sachets for recording and marking, as well as Garcia, the person to whom Esternon directly handed over the seized items for chemical analysis at the crime laboratory, were not presented in court to establish the circumstances under which they handled the subject items. Any reasonable mind might then ask the question: Are the sachets of *shabu* allegedly seized from petitioner the very same objects laboratory tested and offered in court as evidence?

The prosecution's evidence is incomplete to provide an affirmative answer. Considering that it was Gallinera who recorded and marked the seized items, his testimony in court is crucial to affirm whether the exhibits were the same items handed over to him by Esternon at the place of seizure and acknowledge the initials marked thereon as his own. The same is true of Garcia who could have, but nevertheless failed, to testify on the circumstances under which she received the items from Esternon, what she did with them during the time they were in her possession until before she delivered the same to Arroyo for analysis.

The prosecution was thus unsuccessful in discharging its burden of establishing the identity of the seized items because it failed to offer not only the testimony of