SEVENTH DIVISION

[CA-G.R. CR-H.C. No. 04647, March 12, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JOEL ALVAREZ Y CAMPANA , SALVADOR GUADIZ Y PARAAN AND MARIO DAQUIOAG Y MARCELO, ACCUSED-APPELLANTS.

D E C I S I O N

TIJAM, J.:

This is an appeal from the Decision dated July 1, 2010 of the Regional Trial Court ("RTC") of Santiago City, Branch 35, in Criminal Case Nos. 35-5007 to 35-5009, for Violation of Section 11, Article II, R.A. 9165, Violation of Section 15, Article II, R.A. 9165 and Violation of Section 5, Article II, R.A. 9165, respectively.

Accused-Appellant Joel Alvarez ("Alvarez") was charged, in an Information[1] dated June 23, 2005, in Criminal Case No. 35-5007 as follows:

> "That on or about May 12, 2005, at Barangay Villasis, Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his possession and control 0.2 grams more or less, of methamphetamine hydrocloride (sic) placed in one (1) pc heat sealed transparent plastic sachets, without any authority, permit or license to do the same.
>
> CONTRARY TO LAW!"

Accused-Appellants Salvador Guadiz ("Guadiz"), Mario Daquioag ("Daquioag") and Alvarez (hereinafter collectively referred to as "Accused-Appellants") were charged, in an Information[2] dated June 23, 2005, in Criminal Case No. 35-5008 as follows:

> "That on or about May 12, 2005, at Barangay Villasis, Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously ingest and use METAMPHETAMINE HYDROCHLOODE (sic), known as SHABU, a dangerous drug, without any authority or license to do the same.
>
> CONTRARY TO LAW!"

The Accused-Appellants were likewise charged, in an Information[3] dated June 17, 2005, in Criminal Case No. 35-5009 as follows:

> "That on or about May 12, 2005, at Villasis, Santiago City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused in consideration of two (2) pieces of One Hundred (Php 100.00) Peso, marked bill with Serial No. UW386807 abd (sic) CA922461, did

then and there, willfully, unlawfully and feloniously sell to Poseur-buyer, 0.01 gram, more or less of METAMPHETAMINE HYDROCHLOIDE (sic) know as SHABU, placed in a small heat sealed transparent plastic sachet, without any authority or license to do the same.

CONTRARY TO LAW!"

When arraigned on September 6, 2005, the Accused-Appellants all pleaded not guilty to the charges.[4]

The RTC thereafter tried all three cases jointly upon motion duly made.

The prosecution presented Police Inspector Previ Luis ("Luis"), the forensic chemist, and PO3 Peter C. Almarez ("Almarez").

Almarez testified that on May 12, 2005, he, SPO3 Ricardo Agcaoili ("Agcaoili") and SPO2 Eduardo Malana ("Malana") were ordered by their Team Leader, Danilo Tolentino Buan, to conduct possible apprehension/arrest of the Accused-Appellants.

Almarez was assigned as the poseur-buyer of metamphetamine hydrochloride, popularly known as *shabu*, with Agcaoili and Malana as back up. He was given two pieces of one hundred peso bills to be used in buying the *shabu*, on which he placed his initials. These bills were then entered into the police blotter, after which he proceeded to the house of Accused-Appellant Guadiz in Purok 5, Villasis, Santiago City, together with Agcaoili and Malana.

Upon reaching the house of Guadiz, Almarez saw the Accused-Appellants in front of the house of Guadiz. Daquioag approached Almarez, who informed him (Daquioag) that he was going to buy *shabu* and handed over the two one hundred peso bills. After giving the money to Daquioag, Daquioag in turn handed over the money to Guadiz. Daquioag then got the small sachet containing a crystalline substance from Alvarez and handed it over to Almarez.

Upon the signal of Almarez, Agcaoili and Malanan rushed to the scene and the Accused-Appellants were thereafter arrested. Upon Malana's search on the person of Alvarez, he recovered a black wallet containing one heat sealed plastic sachet containing a crystalline substance suspected to be *shabu*. Accused-Appellants were brought to Station 1 located in Villasis, Santiago City for investigation.

Almarez put his initials and the date of recovery on the sachet that Daquioag gave him. Malana, on the other hand, put his initials and the date of recovery on the sachet that he recovered from Alvarez.

Luis testified that a request to the Santiago City PNP Crime Laboratory was made for the examination of two pieces of small heat transparent sachet and two disposable lighters which were confiscated from the direct possession and control of Accused-Appellants[5]. The Request for laboratory examination showed on its face that it was prepared by Police Sr. Inspector Paul Tangan Bometivo, PO3 Obra delivered the specimens to the Santiago City PNP Crime Laboratory Office and that it was received by SPO2 Dayrit RJ.[6]

Luis put into writing the results of her initial laboratory examination[7] and final laboratory report[8], both of which showed that the 0.2 grams of white crystalline substance placed inside a heat sealed transparent plastic bag with markings 5-12-05

RDA, 5-12-05 EMM and the 0.08 grams of white crystalline substance placed inside a heat sealed transparent plastic bag with markings PCA 5-12-05 gave positive result to the tests for Methamphetamine Hydrochloride, a dangerous drug.

The Accused-Appellants were subjected to drug testing and were found positive for tests for Methamphetamine Hydrochloride.[9] However, this was later adjudged by the RTC as inadmissible, it being based on incriminatory evidence.

The defense, on the other hand, presented the Accused-Appellants to prove their innocence of the charges against them.

Guadiz denied the truth of the charges against him and testified that he was just at home on the afternoon of May 12, 2005, when Malana came to his house to invite him to the police station. He claimed that the two other Accused-Appellants, Alvarez and Daquioag, were already in the car when he entered it and that they were brought to the police station where they were handcuffed and detained.

Daquioag also denied the truth of the charges against him. He testified that he was about to buy his viand in the afternoon of May 12, 2005 when he was grabbed by three persons, only one of whom he recognized as Agcaoili, and brought to the police station and detained.

Alvarez likewise denied the truth of the charges against him. He testified that he was with his wife, in the afternoon of May 12, 2005, collecting payments as his wife is in the business of selling clothes on installment basis. He also alleged that a man, whom he later identified as Malana, pointed a gun at him, pulled him and brought him to the car. Thereafter, Daquioag and then Guadiz were brought also to the car and they were brought to the precinct.

The appealed Decision, dated July 1, 2010, disposed as follows:

> "WHEREFORE, in view of the foregoing considerations, the Court hereby adjudge the accused as follows:
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> 1. ACQUITTING all of them of the charges under the Information in Criminal Case No. 35-5008 for want of evidence;
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> 2. CONVICTING accused JOEL ALVAREZ who is found guilty beyond reasonable doubt of the charges under the Information in Criminal Case No. 35-5007 for violation of Section 11, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years, and a fine of Php 300,000.00; and
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> 3. CONVICTING the three (3) accused, namely: SALVADOR GUADIZ Y PARAAN, MARIO DAQUIOAG Y MARCELO, and JOEL ALVAREZ Y CAMPANA, who are guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165 under the Information in Criminal Case No. 35-5009, and hereby sentences each of them to suffer the penalty of life imprisonment and a fine of Php 500,000.00 each.
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> SO ORDERED."

Hence, this appeal.

The Accused-Appellants raised the following assignment of errors:

"I

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ALL THE ELEMENTS THEREOF.[10]

II

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING THE APPREHENDING TEAM'S FAILURE TO PROVE THE INTEGRITY AND IDENTITY OF THE ALLEGED CONFISCATED SHABU.[11]

III

The *court a quo* committed a procedural void when it admitted as competent the pieces of evidence of the prosecution despite the seized items are products of searched and seizures without the requisite judicial warrant."[12]

The crux of the matter in this case is whether or not the guilt of the Accused-Appellants have been proved beyond reasonable doubt.

We have reviewed the records of this case and after deliberation, resolve to acquit the Accused-Appellants due to the prosecution's failure to prove their guilt beyond reasonable doubt. We find that the prosecution was not able to establish with moral certainty that the integrity and evidentiary value of the items recovered from the Accused-Appellants were preserved, such that they could be used as basis for the Accused-Appellants' conviction.

The applicable law on this case is Republic Act No. 9165, also known as the Comprehensive Dangerous Drugs Acts of 2002, specifically Article II, Section 5[13] (Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals) and Section 11[14] (Possession of Dangerous Drugs).

The essential elements for illegal sale of *shabu*, are as follows: (a) the identities of the buyer and the seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. What is material in prosecutions for illegal sale of *shabu* is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. [15]

As the dangerous drug itself constitutes the very *corpus delicti* of both offenses, its identity and integrity 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.[16]

This means that, on top of the elements of possession or illegal sale, the fact that the substance [possessed or illegally sold], in the first instance, the very substance adduced in court must likewise be established with the same exacting degree of certitude as that required sustaining a conviction. Thus, the prosecution must be able to account for each link in the chain of custody over the dangerous drug, from

the moment it was seized from the accused up to the time it was presented in court as proof of the *corpus delicti*. The chain of custody requirement "ensures that unnecessary doubts respecting the identity of the evidence are minimized if not altogether removed."[17]

Paragraph 1, Section 21[18], Article II of Republic Act No. 9165 and its implementing rules outline the procedure on the chain of custody of confiscated, seized, or surrendered dangerous drugs.

The preservation of the integrity and identity of the seized articles is precisely what is being questioned by the Accused-Appellants. They point out that the apprehending officers utterly failed to comply with the provisions of the law, i.e. the marking on the seized items were not done in the presence of the accused, their representative or counsel, a representative from media and the Department of Justice and any elected public official; and no photograph or inventory was taken and submitted by the apprehending officers.[19]

The Plaintiff-Appellee on the other hand countered these arguments and stated that what matters in the prosecution of dangerous drugs cases is not the immediate marking but that the prosecution be able to establish the chain of custody of the *corpus delicti*.

Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002 which implements R.A. No. 9165 defines "Chain of Custody" as follows:

> "'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 for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition."

These set out the enumeration of the 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 this case, we find that the procedural guidelines were not strictly complied with. While non-compliance with the prescribed procedural requirements will not automatically render the seizure and custody of the items void and invalid, this is true only when "(i) there is a justifiable ground for such non-compliance, and (ii) the