

SECOND DIVISION

[G.R. No. 177220, April 24, 2009]

PEOPLE OF THE PHILIPPINES, APPELLEE, VS. RUBEN ROBLES Y NOVILINIO, APPELLANT.

DECISION

CARPIO MORALES, J.:

Challenged in this appeal is the December 4, 2006 Decision of the Court of Appeals in CA-G.R. CR.-H.C. No. 00306^[1] affirming the June 18, 2004 Decision of Branch 259 of the Regional Trial Court of Parañaque City in Crim. Case No. 02-0842-3 finding Ruben Robles y Novilinio alias *Bombay* (appellant) guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with illegal sale and illegal possession of *shabu* in two separate Amended Informations, both dated August 27, 2002, reading:

First Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously give away, distribute and sell to a customer for P100.00 pesos one (1) small heat sealed transparent plastic sachet containing crystalline substances (*shabu*), weighing 0.09 gram, which when examined were found positive for Methylamphetamine Hydrochloride (*shabu*), a dangerous drug, in violation of the above-cited law.^[2]

Second Amended Information

That on or about the 5th day of July 2002, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess or otherwise use any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession and under his control and custody one (1) heat sealed transparent plastic sachet containing white crystalline substance which when examined was found to be positive for Methylamphetamine Hydrochloride (*shabu*), weighing 0.16 gram, a dangerous drug, in violation of the above-cited law.^[3]

One Leogando Pilapil (Pilapil) was also indicted for illegal possession of *shabu* under a similarly worded Amended Information of even date.^[4]

On arraignment, appellant and Pilapil pleaded not guilty.^[5]

The combined testimonies of PO2 Marlou Besoña (PO2 Besoña)^[6] and PO3 Elorde Malicse (PO3 Malicse)^[7] of the Drug Enforcement Unit (DEU)

of the Parañaque City Police Station reflect the following version of the prosecution:

At around 5:00 in the afternoon of July 5, 2002, the above-named witnesses received a report from a confidential informant that a certain alias *Bombay*, later identified to be appellant, was peddling *shabu* along Dimasalang Street, Barangay Baclaran, Parañaque City. DEU Chief Wilfredo Calderon immediately constituted a buy-bust team composed of PO2 Besoña, PO3 Malicse, SPO3 Hyacinth Ocfemia (SPO3 Ocfemia), SPO1 Mario Vidallon (SPO1 Vidallon), and PO3 Elmer Magtanong (PO3 Magtanong). PO2 Besoña was designated poseur-buyer.

The buy-bust team proceeded to the target area wherein the informant pinpointed appellant as the *shabu* peddler. With his back-up team members strategically positioned, PO2 Besoña approached appellant and asked, "*Puwede bang umiskor?*" (May I have a fix?). Appellant asked how much to which PO2 Besoña replied P100. Appellant thereafter told PO2 Besoña, "*Akin na.*" (Give it to me).

PO2 Besoña thereupon tendered a marked P100 bill to appellant who, in exchange, handed over a transparent plastic sachet containing a white crystalline substance. PO2 Besoña at once raised his right hand as a pre-arranged signal, prompting the other team members to close in and arrest appellant. PO2 Besoña turned over the substance to SPO3 Ocfemia, and the marked money to SPO1 Vidallon. The team also arrested Pilapil, who was then with appellant, as a similar substance was recovered from him.

Appellant and Pilapil, were brought to the Parañaque City Police Station for investigation. The members of the team executed a *Pinagsamang Sinumpaang Salaysay* (Joint Sworn Statement)^[8] which additionally stated that at the time of appellant's arrest, he voluntarily surrendered two more transparent plastic sachets both containing the same white crystalline substance.

A total of four transparent plastic sachets each containing a white crystalline substance were thus recovered from appellant and Pilapil which, when subjected to laboratory tests, were found positive for methylamphetamine hydrochloride (*shabu*).^[9]

For their part, appellant^[10] and Pilapil^[11] gave their side as follows:

Between 5:00 PM and 6:00 PM, Pilapil was at Bagong Silang Street, Baclaran, Parañaque City playing *cara y cruz* with about ten to eleven persons. Appellant was eating barbecue at corner Dimasalang and Bagong Silang Streets, around nine meters away from Pilapil and his companions when four persons in civilian clothes carrying short firearms suddenly arrived. The players scampered away, but Pilapil and an unnamed companion were left behind and arrested.

Pilapil and his companion were boarded on an owner-type jeep which headed toward appellant. Appellant was frisked, hence, he demanded for an explanation, peeing the arresting men who handcuffed him and ordered to join Pilapil and his companion in the jeep.

Appellant, Pilapil and his companion were first brought to the Parañaque Community Hospital for a medical check-up, and then to the Coastal Police Station. At the station, they were frisked but no *shabu* was recovered from their person or shown to them. Pilapil's money amounting to P400 was confiscated, however.

Pilapil's companion was released in the evening as his relatives came to pick him up. Appellant and Pilapil, on the other hand, were detained and eventually charged.

By Decision dated June 18, 2004,^[12] the trial court found appellant guilty of both illegal sale and illegal possession of *shabu*. Pilapil was acquitted. Thus the trial court disposed:

WHEREFORE, PREMISES CONSIDERED, finding Ruben Robles GUILTY beyond reasonable doubt of Violation of Section 5 Art. II RA 9165 for unlawfully

selling 0.09 gram of Methamphetamine Hydrochloride (shabu). He is hereby sentenced to a penalty of life imprisonment and to pay a fine of P500,000.00 and sentenced also to 12 years imprisonment and to pay a fine of P300,000.00 for Violation of Section 11 Art. II RA 9165 for illegal possession of 0.16 gram of Methamphetamine Hydrochloride (shabu).

For insufficiency of evidence and failure of the prosecution to present that quantum of proof necessary to overcome the constitutional presumption of innocence in favor of the accused, the Court hereby pronounces **Leogardo (sic) Pilapil NOT GUILTY** of Violation of Section 11 Art. II RA 9165 for alleged possession of 0.09 gram of Methamphetamine Hydrochloride.

The Clerk of Court is directed to prepare the Mittimus for the immediate transfer of Ruben Robles from Parañaque City Jail to New Bilibid Prisons, Muntinlupa City. He is further directed to forward all specimen in these cases to the Philippine Drugs Enforcement Agency for proper disposition.^[13]

In convicting appellant, the trial court relied on the presumption that law enforcement officers have performed their duties regularly and the rule that denial as a defense is inherently weak.

By Decision of December 4, 2006,^[14] the Court of Appeals sustained appellant's conviction for illegal sale of *shabu*, but exonerated him on the charge of illegal possession. It found, among other things, that the elements of illegal sale were sufficiently established by the testimonies of PO2 Besoña and PO3 Malicse.

On the charge of illegal possession, the appellate court held that the records bore discrepancies in the identity of the illegal substance which, coupled with the prosecution's failure to distinguish the *shabu* subject of the sale from that found in appellant's possession, warranted appellant's acquittal on reasonable doubt.

Appellant now seeks relief from this Court.

In his Supplemental Brief,^[15] appellant maintains that the prosecution failed to prove his guilt beyond reasonable doubt. He questions, among other things, the forensic laboratory examination results and the chain of custody of the *shabu* subject thereof, as in fact the appellate court itself found that the prosecution failed to distinguish the *shabu* allegedly sold by him from that found in his possession.

The appeal is impressed with merit.

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.^[16]

In a prosecution for illegal sale of dangerous drugs, the following elements must be established: (1) proof that the transaction or sale took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence.^[17] The existence of dangerous drugs is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs, it being the very *corpus delicti* of the crime.^[18] Central to this requirement is the question of whether the drug submitted for laboratory examination and presented in court was actually recovered from appellant. Hence, the Court has adopted the chain of custody rule.

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. 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.^[19] (Underscoring supplied)

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 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.^[20] Thus, the *corpus delicti* should be identified with unwavering exactitude.^[21]

The Court finds that the prosecution failed to clearly establish the chain of custody of the seized plastic sachet containing shabu subject of the alleged sale. PO2 Besoña and PO3 Malicse did not adequately explain how the *corpus delicti* transferred hands from the time it was supposedly confiscated from appellant to the time it was presented in court as evidence.

PO2 Besoña testified that he turned over the sachet of *shabu* to SPO3 Ocfemia when appellant was arrested. No explanation was given, however, as to how the substance reached the crime laboratory for examination. PO2 Besoña did not mark the substance immediately after the apprehension of appellant. While PO2 Besoña claimed that it was marked by an investigator in his presence,^[22] he did not state at what precise point of the operation the marking took place. Both the investigator who purportedly made the marking and SPO3 Ocfemia were not presented in court to testify on what transpired before and after the substance was turned over to them.

PO3 Malicse's testimony is not of any help on the question of chain of custody either, for he in fact admitted not having seen the transaction between PO2 Besoña and appellant.^[23]

As the Court explained in its earlier-quoted ruling in *Malillin*, the chain of custody rule requires that testimony be presented about every link in the chain, from the moment the item was picked up to the time it is offered in evidence. The testimonies of PO2 Besoña and PO3 Malicse fell short of this standard. Moreover, they did not 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 thereof.

Additionally, the Court notes further that nothing on record shows compliance by the buy-bust team with the procedural requirements of Section 21, paragraph 1 of Article II of R.A. No. 9165^[24] with respect to custody and disposition of confiscated drugs. There was no physical inventory and photograph of the items allegedly confiscated from appellant. There was likewise no explanation offered for the failure to observe the rule.

The failure of the police to comply with the procedure in the custody of seized drugs raises doubt as to their origins,^[25] and negates the operation of the presumption of regularity accorded to police officers.^[26]

WHEREFORE, the appeal is **GRANTED**. The assailed decision is **REVERSED** and **SET ASIDE**. Appellant, Ruben Robles y Novilinio, is **ACQUITTED** on reasonable doubt.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City who is **ORDERED** to cause the immediate release of appellant, unless he is being

lawfully held for another cause, and to inform this Court of action taken within ten (10) days from notice.

SO ORDERED.

Tinga, Velasco, Jr., Leonardo De Castro^{*}, and *Brion, JJ.*, concur.

* Additional member in lieu of Justice Leonardo A. Quisumbing who is on official leave.

[1] Penned by Associate Justice Estela M. Perlas-Bernabe, with the concurrence of Associate Justices Renato C. Dacudao and Rosmari D. Carandang. CA *rollo*, pp. 69-77.

[2] Records, p. 12.

[3] Id. at 13.

[4] Id. at 14.

[5] Id. at 20.

[6] TSN of August 4, 2003, Records, pp. 42-83.

[7] TSN of November 10, 2003, Records, pp. 91-115.

[8] Records, p. 2.

[9] Id. at 3.

[10] TSN of May 20, 2004, Records, pp. 171-206.

[11] TSN of April 27, 2004, Records, pp. 136-165.

[12] Records, pp. 223-228.

[13] Id. at 228.

[14] CA *rollo*, pp. 69-77.

[15] *Rollo*, pp. 30-42.

[16] *People v. Pedronan*, G.R. No. 148668, June 17, 2003, 404 SCRA 183, 188.

[17] *People v. Hajili*, 447 Phil. 283, 295 (2003).

[18] *Vide People v. Almeida*, 463 Phil. 637, 648 (2003).

[19] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[20] *People v. Dela Cruz*, G.R. No. 181545, October 8, 2008.

[21] *Zarraga v. People*, G.R. No. 162064, March 14, 2006, 484 SCRA 639, 647.

[22] TSN of August 4, 2003, Records, pp. 72-74.

[23] TSN of November 10, 2003, Records, pp. 114-115.

[24] 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[.]

[25] *Vide People v. Ortega*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 758.

[26] *People v. Santos, Jr.*, G.R. No. 175593, October 17, 2007, 536 SCRA 489, 505.