

654 Phil. 461

## SECOND DIVISION

[ G.R. No. 190640. January 12, 2011 ]

**PEOPLE OF THE PHILIPPINES, APPELLEE, VS. LUIS PAJARIN Y DELA CRUZ AND EFREN PALLAYA Y TUVIERA, APPELLANTS.**

## DECISION

**ABAD, J.:**

This case is about the need for the prosecution and all law enforcement agencies involved in illegal drugs operations to ensure proper observance of the rules governing entrapment of peddlers of prohibited substances.

### **The Facts and the Case**

The City Prosecutor of Manila charged the accused Luis Pajarin and Efren Pallaya before the Regional Trial Court (RTC) of Manila in Criminal Cases 05-237756 and 05-237757 with violation of Section 5 in relation to Sections 26 and 11 (3) in relation to Section 13, respectively, of Article II of Republic Act (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The prosecution presented PO2 Nestor Lehetemas, member of the buy-bust team and PO2 James Nolan Ibañez, the *poseur*-buyer. They testified that on June 1, 2005 at around 10:00 p.m., an informant arrived at their Station Anti-Illegal Drugs (SAID) with the report that drugs would be sold on P. Ocampo and Dominga Streets the next day at around 5:00 pm. As the *poseur*-buyer, PO2 Ibañez marked a P500.00 bill with SAID on top of its serial number.

On June 2, 2005 the buy-bust team went to the site of the operation on board a Tamaraw FX which they parked near Dominga Street. The informant pointed to the two accused, Luis Pajarin and Efren Pallaya. They stood 10 to 20 steps away beside a red scooter. PO2 Ibañez and the informant approached them. After the informant introduced PO2 Ibañez as an

interested buyer, the police officer bought *shabu* from the two, using the marked P500.00 bill. Pajarin opened the compartment of the red scooter and took from it one heat-sealed transparent plastic sachet containing a white crystalline substance. When Pallaya asked for the money, PO2 Ibañez handed it to him. Then Pajarin gave one plastic sachet containing the suspected *shabu* to the officer, who raised his right hand as a pre-arranged signal. PO2 Ibañez's companions immediately rushed to the group. PO2 Ibañez grabbed Pallaya. Pajarin tried to escape but PO2 Lehetemas got hold of him.

The police searched the red scooter's compartment and recovered another plastic sachet containing the same substance. They then brought the accused to their station. The arresting officers turned over the seized suspected *shabu* to PO3 Roel Young who marked the plastic sachet seized from the scooter with the letters "*ETP*," and the sachet Pajarin handed over with the letters "*LDCP*." Chemistry Report D-369-05 showed that upon examination of the submitted specimen, the same yielded positive result for *Methylamphetamine hydrochloride*, a regulated drug.

The defense had a completely different version. Pajarin said that at around 2:00 p.m. of June 2, 2005 he was at Pallaya's house, repairing the latter's motor pump. As he left the house and got into the street, someone hit his helmet, grabbed him, and dragged him into a Tamaraw FX. They then brought him back to Pallaya's house where four police officers got in and brought Pallaya out with them after about three minutes. The officers brought the two accused to the police station where they were investigated. PO2 Ibañez showed Pajarin a plastic sachet which he supposedly recovered from Pajarin's scooter. Pajarin denied owning the sachet. It was a police officer who drove the scooter to the police station.

For his part, Pallaya testified that on June 2, 2005 he was taking a bath at the fourth floor of his four-storey house when he heard knocking at the door. When he opened it, he was surprised to see four men there, claiming to be police officers. They broke open the doors of the house from the ground to the third floor. The officers ordered him to dress up and forced him to go with them. Pallaya asked for a warrant of arrest or a search warrant but he got no response from them. They made him board a Tamaraw FX where Pajarin sat. They then brought the accused to the police station.

On March 31, 2008 the RTC found both accused guilty of the crime charged and imposed on them the penalty of life imprisonment and a fine of P500,000.00 in Criminal Case 05-237756. In Criminal Case 05-237757, the RTC sentenced Pajarin to suffer 12 years and 1 day to 17 years and 4 months of imprisonment and to pay a fine of P300,000.00. The RTC

absolved Pallaya of this second offense.

On appeal to the Court of Appeals (CA) in CA-G.R. CR-HC 03291, the latter rendered a decision dated September 30, 2009, affirming the RTC decision, hence the present appeal to this Court.

### **The Issues Presented**

Accused Pajarin and Pallaya raise two issues:

1. Whether or not the CA erred in not excluding the evidence of the seized *shabu* on the ground that the prosecution failed to prove their integrity by establishing the chain of custody of the same until they got to the trial court; and
2. Whether or not for this reason the CA erred in affirming their conviction.

### **The Rulings of the Court**

Appellants chiefly argue that the police officers involved in the buy-bust operation failed to comply with Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. 9165, which requires them to take immediate inventory of and photograph the seized item in the presence of the accused or his representative or responsible third persons mentioned but always taking care that the integrity and evidentiary value of the seized articles are preserved.

The Court has held in numerous cases that the failure of the police to comply with the procedure laid down in R.A. 9165 would not render void the seizure of the prohibited substance for as long as the apprehending officers give justifiable reason for their imperfect conduct<sup>[1]</sup> and show that the integrity and evidentiary value of the confiscated items had not been compromised.<sup>[2]</sup>

Here, the prosecution failed to show that the substances allegedly seized from the accused were the same substances presented in court to prove their guilt. Usually, the seized article changes hands from the police officer who takes it from the accused, to the supervising officer at their station, to the messenger who brings them to the police crime laboratory, and then to the court where it is adduced as evidence. Since custody and possession change over time, it has been held indispensable that the officer who seized the article

places it in a plastic container unless it is already in one, seals it if yet unsealed, and puts his marking on the cover. In this way there is assurance, upon inspection, that the substance reaches the laboratory in the same condition it was seized from the accused.<sup>[3]</sup>

Here, the police officers did not mark the sealed plastic sachets to show that they were the same things they took from the accused. Rather, the marking on the items were done by the station investigator who would have no way of knowing that the substances were really seized from the accused. The marking of captured items immediately after they are seized from the accused is the starting point in the custodial link. This step is vital because succeeding handlers of the specimens will use the markings as reference. Failure to place such markings paves the way for swapping, planting, and contamination of the evidence.<sup>[4]</sup> These lapses seriously cast doubt on the authenticity of the *corpus delicti*, warranting acquittal on reasonable doubt.<sup>[5]</sup>

Further, as a rule, the police chemist who examines a seized substance should ordinarily testify that he received the seized article as marked, properly sealed and intact; that he resealed it after examination of the content; and that he placed his own marking on the same to ensure that it could not be tampered pending trial. In case the parties stipulate to dispense with the attendance of the police chemist, they should stipulate that the latter would have testified that he took the precautionary steps mentioned. Here, the record fails to show this.

It is a serious concern that quite often the failure of the police to observe the rules governing buy-bust operations results in acquittals. Drug enforcement agencies should continually train their officers and agents to observe these rules and transfer out those who would not. The prosecutors conducting preliminary investigation should not file in court drugs cases where the sworn statements of the police officers, the report of the chemical analyst, and the object evidence do not show compliance with the same. And trial courts should order the case dismissed and the accused released from detention if on examination the supporting documents are wanting in this respect. They should not waste their precious time to useless exercise where the police and the prosecution fail to observe the rule of law especially in so serious offenses.

**WHEREFORE**, the Court **REVERSES and SETS ASIDE** the decision of the Court of Appeals dated September 30, 2009 in CA-G.R. CR-HC 03291 as well as the decision of the Regional Trial Court of Manila, Branch 2, in Criminal Cases 05-237756 and 05-237757, and **ACQUITS** the accused-appellants Luis Pajarin and Efren Pallaya on the ground of

reasonable doubt. The Court orders their immediate **RELEASE** from custody unless they are being held for some other lawful cause.

**SO ORDERED.**

*Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.*

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<sup>[1]</sup> *People v. Habana*, G.R. No. 188900, March 5, 2010.

<sup>[2]</sup> *People v. Daria, Jr.*, G.R. No. 186138, September 11, 2009, 599 SCRA 688, 700, citing *People v. Agulay*, G.R. No. 181747, September 26, 2008, 566 SCRA 571, 595.

<sup>[3]</sup> *People v. Habana*, supra note 1.

<sup>[4]</sup> *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

<sup>[5]</sup> *People v. Laxa*, 414 Phil. 156, 170 (2001).

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