

THIRD DIVISION

[G.R. No. 186467, July 13, 2011]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JAIME GATLABAYAN Y BATARA, ACCUSED-APPELLANT.

DECISION

MENDOZA, J.:

This is an appeal from the July 29, 2008 Decision [1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02221, which affirmed the May 10, 2005 Decision [2] of the Regional Trial Court of San Mateo, Rizal, Branch 77 (RTC), in Criminal Case No. 6384, finding accused Jaime Gatlabayan y Batara (*Gatlabayan*) guilty beyond reasonable doubt of violation of Section 5 (1), Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information [3] reads:

That on or about the 10th day of September, 2002 in the Municipality of Rodriguez, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and knowingly sell, deliver and give away to another person one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance which gave positive result to the test for Methamphetamine Hydrochloride, a dangerous drug, and which substance produces a physiological action similar to amphetamine or other compound thereof producing similar physiological effects.

CONTRARY TO LAW.

During the trial, the parties agreed to stipulate on the testimonies of prosecution witnesses, Police Officer 1 (PO1) Reynaldo Albarico and Police Inspector (P/Insp.) Joseph Perdido, the forensic chemist. The prosecution, thereafter, presented PO1 Fortunato Jiro III (*PIO Jiro III*) and PO1 Jose Gordon Antonio (*PO1 Antonio*) at the witness stand. The defense, on the other hand, presented Gatlabayan, the accused himself.

The Version of the Prosecution

The People's version of the incident has been summarized by the Office of the Solicitor General (OSG) in its Brief [4] as follows:

On September 10, 2002, at around 8:30 in the evening, while PO1 Jose Gordon Antonio, a member of PNP Intelligence Operative Division of Rodriguez, Rizal, together with his colleagues, PO1 Fortunato Jiro and PO1 Albarico, were inside their station, they received an information from an "asset" that appellant Jaime Gatlabayan alias "Pungay" was rampantly selling illegal drugs at Carlton Village, Brgy. Manggahan, Rodriguez, Rizal. On the basis of said information, the police officers immediately decided to form a composite team for the conduct of a buy-bust operation against appellant. Consequently, PO1 Antonio was tasked as the poseur-buyer equipped with a ₱100.00 bill buy-bust money where his initials "JGA" was written thereon, while PO1 Jiro and PO1 Albarico acted as members. Thereupon, the composite team recorded in their police blotter the planned buy-bust operation. Thereafter, the three (3) police officers with their "asset" proceeded to the target area on board an owner type jeep.

Arriving thereat, the civilian asset pointed appellant to the buy-bust team. Appellant was then standing under a Sampaloc tree at Carlton Village, Brgy. Manggahan, Rodriguez, Rizal. Afterwards, poseur-buyer PO1 Antonio, from a distance of 10 meters away from appellant alighted from the car while the rest of the composite team and the informer remained in the vehicle. Meanwhile, poseur-buyer PO1 Antonio walked towards appellant. Upon seeing PO1 Antonio, appellant asked if he wants "to score," (which in local parlance means, if he wants to buy "shabu") to which PO1 Antonio readily answered yes, and simultaneously handed to appellant the P100 marked money. In turn, appellant gave him a small plastic sachet containing white crystalline substance suspected of "shabu." Upon consummation of the sale, PO1 Antonio gave the pre-arranged signal of waiving his hand. Seeing this, police officers Jiro and Albarico rushed to the *locus criminis* and simultaneously introduced themselves as police officers. Then, PO1 Jiro directed appellant to empty his pocket and the ₱100.00 marked money fell on the ground. Thereafter, appellant was arrested and was apprised of his constitutional rights and was likewise informed of the crime he committed.

Appellant was brought to the nearby police station of Rodriguez, Rizal for investigation. Subsequently, the plastic sachet sold by appellant to poseur-buyer PO1 Antonio was subjected to a laboratory examination and forensic chemist Police Inspector Joseph M. Perdido of the PNP Crime Laboratory in his Chemistry Report No. D-1784-02E found that the subject crystalline substance is positive for methamphetamine hydrochloride or "shabu." Consequently, appellant was charged for violation of Section 5, Paragraph 1, Article II of R.A. 9165 or for "Illegal Sale of Dangerous Drugs." [5]

The Version of the Defense

In his Brief, [6] Gatlabayan denied that he was caught, *in flagrante*, selling shabu and claimed that he was just a victim of police frame-up. The accused presents the following version of what transpired:

JAIME GATLABAYAN was at the "peryahan" with a companion on September 10, 2002, at 8:00 o'clock in the evening. While the accused was singing, PO1 Antonio along with PO1 Jiro arrived and suddenly handcuffed him. The accused asked "Sir, anong kasalanan ko?" PO1 Antonio just replied "basta sumama ka na lang." He was brought to the police station and was incarcerated. The accused was not frisked when he was arrested. He denied the offense charged against him. [7]

On May 10, 2005, the RTC rendered its judgment rejecting the defense of frame-up proffered by the accused and declared that the same fell flat in the face of the affirmative testimony of prosecution witnesses, PO1 Antonio and PO1 Jiro III, who categorically and forthrightly testified that he was caught in flagrante delicto selling shabu. The trial court ruled that the presumption of regularity in the performance of duties in favor of the police operatives had not been overturned in the absence of clear showing that they had been impelled by any ill motive to falsely testify against him for such serious crime. It added that the alleged inconsistencies in the testimonies of the police officers pertained to inconsequential or collateral matters which did not impair their credibility. The dispositive portion of the RTC decision reads:

WHEREFORE, the guilt of the accused having been proven beyond reasonable doubt as charged in the information, without any aggravating or qualifying circumstance, accused JAIME GATLABAYAN Y BATARA is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay the fine of FIVE HUNDRED THOUSAND (P500,000.00) PESOS.

SO ORDERED. [8]

On appeal, the CA affirmed the conviction of the accused on the basis of the testimony of PO1 Antonio and PO1 Jiro, III which it found credible and sufficient to sustain a conviction. The CA was of the view that the presumption of regularity in the performance of official duty was not sufficiently controverted by him. It ruled that the prosecution was able to satisfactorily establish the elements of the crime of illegal sale of dangerous drugs as well as the identity of the accused. Lastly, the CA debunked his defense that he was a victim of frame-up and that he was not arrested pursuant to a valid buy-bust operation, for failure to substantiate the same. The dispositive portion of its Decision reads:

WHEREFORE, the assailed *Decision* dated 10 May 2005 of the Regional Trial Court, Fourth Judicial Region, San Mateo, Rizal, Branch 77, is hereby AFFIRMED.

SO ORDERED. [9]

On August 20, 2008, Gatlabayan filed a Notice of Appeal, [10] which was given due course by CA in its Minute Resolution [11] dated September 23, 2008.

On April 26, 2010, this Court issued a resolution notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty days from notice. The OSG filed a manifestation dated May 29, 2009 informing the Court that it would no longer file a supplemental brief. On June 23, 2009, the accused filed his supplemental brief. [12]

THE ISSUES

Maintaining his innocence, Gatlabayan imputes to the trial court the following errors:

I

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF VIOLATION OF SECTION 5, ARTICLE II, R.A. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO PROVE THE OFFENSE CHARGED BEYOND REASONABLE DOUBT.

II

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE INCONSISTENT AND CONTRADICTING TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF VIOLATION OF SECTION 5, ARTICLE II, R.A. 9165 DESPITE THE FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE ILLEGAL DRUG.

In his Supplemental Brief, Gatlabayan presents the following additional assignment of error:

THE COURT OF APPEALS GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THE CHAIN OF CUSTODY OF THE ALLEGED SEIZED ILLEGAL DRUGS, IN VIOLATION OF SECTION 21 AND 86 OF R.A. NO. 9165.

The accused is of the stance that the prosecution failed to prove his guilt beyond reasonable doubt. He avers that both the RTC and the CA were mistaken in upholding the presumption of regularity in the performance of official functions in favor of the police officers and giving undue credence to their testimonies which, he claims, were laced with inconsistencies that cast serious doubt on their credibility and the validity of the alleged buy-bust operation. He posits that the prosecution failed to establish the material details of said entrapment operation and that his arrest was invalid. He argues that the failure of the apprehending team to observe the procedure outlined by Section 21 of R.A. No. 9165 impaired the prosecution's

case. Finally, he assails the prosecution evidence for its failure to establish the proper chain of custody of the shabu allegedly seized from him.

The OSG, on the other hand, maintains that the testimonies of PO1 Antonio and PO1 Jiro III were credible and sufficient to convict. It insists that the culpability of the accused for the crime of illegal sale of shabu was proven beyond reasonable doubt.

The Court's Ruling:

The core issue in this case is whether or not sufficient evidence exists to support the conviction of the accused for violation of Section 5, Article II of R.A. No. 9165.

Let it be underscored that appeal in criminal cases throws the whole case open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned. [13] Considering that what is at stake here is no less than the liberty of the accused, this Court has meticulously and thoroughly reviewed and examined the records of the case, and finds that there is merit in the appeal.

As a general rule, the trial court's findings of fact, especially when affirmed by the CA, are entitled to great weight and will not be disturbed on appeal. The rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misplaced. [14] The case at bench falls under the above exception and, hence, a departure from the general rule is warranted.

Jurisprudence has firmly entrenched that in prosecution of illegal sale of dangerous drugs, the following essential elements must be established: (1) the transaction or sale took place; (2) the *corpus delicti* or the illicit drug was presented as evidence; and (3) the buyer and seller were identified. [15] Implicit in all these is the need for proof that the transaction or sale actually took place, coupled with the presentation in court of the confiscated prohibited or regulated drug as evidence.

The narcotic substance itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is therefore of prime importance that the identity of the dangerous drug be likewise established beyond reasonable doubt. [16] Otherwise stated, it must be proven with exactitude that the substance bought during the buy-bust operation is the same substance offered in evidence before the court. Thus, every fact necessary to constitute the offense must be established. The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed. [17]

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