

SECOND DIVISION

[G. R. No. 193234, October 19, 2011]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROBERTO MARTIN Y CASTANO, ACCUSED-APPELLANT.**

DECISION

SERENO, J.:

Before us on automatic review is the Decision of the Court of Appeals (CA) affirming the trial court's conviction of the accused for the sale of methylamphetamine hydrochloride or *shabu*. Accused cries foul, alleging extortion and citing various irregularities in the prosecution's evidence and in the conduct of the alleged buy-bust operation.

On 13 November 2006, an Information was filed against Roberto Martin y Castano alias Inpet (Martin) for violation of Section 5, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in the following manner:

That on or about November 6, 2006, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another, any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale ZERO POINT ZERO FIVE THREE (0.053) gram of white crystalline substance known as shabu, containing methylamphetamine hydrochloride which is a dangerous drug.

Contrary to law.

The case was docketed as Criminal Case No. 06-248053 and was raffled to the Regional Trial Court (RTC), Branch 2, Manila presided over by Judge Alejandro G. Bijasa. Martin pleaded not guilty to the charge during arraignment.

Trial ensued with the prosecution presenting the testimonies of Police Officer 3 (PO3) Rodolfo Ong and Senior Police Officer 1 (SPO1) Jose Mora. Meanwhile, the defense presented the testimonies of Juvilyn Caletisen, Jimmy Garote, and accused Martin himself.

According to the prosecution, the buy-bust operation and the subsequent events which led to the filing of the information against the accused were as follows:

SPO1 Mora testified that after they received information from a confidential informant,^[1] who came to their office "at around 5:30 p.m." of 6 November 2006, ^[2] the Pre-Operation Report/Coordination Sheet was prepared on the same day. On

re-direct, SPO1 Mora stated that the informant came to their office at 5:00 p.m.^[3] On the other hand, SPO3 Ong testified that they prepared the Pre-Operation Report/Coordination Sheet on 6 November 2006 "on or about 2:00 to 3:00p.m."^[4] and that they submitted this document to the Philippine Drug Enforcement Agency (PDEA) at "around 2:30 p.m."^[5] The confidential informant was neither identified nor presented in court.

A photocopy of the Pre-Operation Report/Coordination Sheet provisionally marked Exhibit "D" on 4 September 2007^[6] (the original was never presented in court) showed that it was received by "SPO4 Mariano" of "PDEA-MMRO" but the date and time of receipt was not indicated in the space so provided. Assuming that the date and time of receipt by the PDEA-MMRO of the coordination document was either one of three faint stamps marked on the face thereof,^[7] it received the said document hours ahead of the arrival of the confidential informant to the police station.

The Pre-Operation Report/Coordination Sheet named six (6) police officers as part of the team led by Senior Police Inspector Joselito Binayug. They planned on using six (6) vehicles, three (3) of them SUVs, to perform the operation against alias "Inpet" in the area broadly identified as "MPD AOR (PS1 to PS 11)". After accomplishing the Pre-Operation Report/Coordination Sheet, the police officers testified that they proceeded to Oro-B, Pandacan, Manila accompanied by the informant.

SPO1 Mora confirmed that he was designated as the *poseur* buyer, and that he was given the P100.00 marked money which he himself marked at the right hand portion with "DAID".^[8] SPO1 Mora narrated that he arrived at the site together with the informant on board his car. The informant alighted from the car and, before he could reach Martin who was standing along Oro-B Street, the latter waved at the informant to come near.^[9] SPO1 Mora then approached Martin together with the informant who introduced him to Martin as a buyer of P100.00 worth of *shabu*. Simultaneously, SPO1 Mora handed the P100.00 to Martin while the latter gave him a small plastic sachet.^[10] SPO1 Mora grabbed Martin and introduced himself as a police officer while PO3 Ong assisted him with a body search of Martin.

The police officers testified that the pre-arranged signal to indicate the consummation of the buy bust operation was the arrest of the accused.^[11] Only the *poseur*-buyer, SPO1 Mora, and the confidential informant were with Martin minutes prior to the latter's arrest. SPO3 Ong confirmed that he was 10 to 15 meters away from SPO1 Mora and Martin while the meeting was taking place such that he could not "ascertain what was going on between the poseur buyer, SPO1 Mora and the accused"^[12] and that he was the only police officer who assisted SPO1 Mora during the arrest, as the other police officers were left inside their respective vehicles^[13] and were "very far" from him.^[14]

On the other hand, the defense witnesses testified as follows:

The accused denied that he is alias Inpet, or that he gave PO1 Mora a plastic sachet containing shabu.^[15] He testified that on 6 November 2006, he was working at the junkshop with Jimmy Garrote whom he later invited for lunch at his house nearby. They were about to enter the alley near Oro-B when the accused's neighbor, Juvilyn

Caletisen, called out to talk with him.^[16] A certain Jayrold was also in the alley. It was then that six policemen arrived and forced them to go with the police.^[17] When asked what their offense was, the police replied that they could explain their side at the precinct.^[18]

Juvilyn Caletisen corroborated this with her testimony that six armed persons arrived at the alley near their house in Oro-B before lunch while she was conversing with the accused.^[19] They arrested the accused, herself, Jimmy, Jayrold, and a certain Brian^[20] and brought them to the police headquarters where they were detained for a night.

In their respective testimonies, Juvilyn Calitesen,^[21] Jimmy Garote^[22] and the accused^[23] all testified that the police demanded that they give P5,000 each for their release or else, they will be charged with a crime. All the defense witnesses also testified that except for Martin who had no money, all of them were released because they were each able to give the P5,000 which the police demanded.^[24]

On 10 March 2008, the trial court issued its Decision, the dispositive portion of which read in part:

WHEREFORE, finding the accused, Roberto Martin y Castano @ Inpet, GUILTY, beyond reasonable doubt of the crime charged, he is hereby sentenced to life imprisonment and to pay a fine of P500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The trial court held that there was no showing of any ill motive on the part of the police in testifying against Martin. The integrity and evidentiary value of the seized item was properly preserved by SPO1 Mora. The defense of frame up is viewed with disfavor because it is easily concocted and commonly used as a standard line of defense in most prosecution of dangerous drugs cases. Assuming there was extortion, such fact is not determinative of his guilt or innocence as the demand was made after the offense was consummated.

The Court of Appeals (CA) denied Martin's appeal and affirmed the RTC decision.^[25] Martin elevated the matter for review by this Court, alleging that the Court of Appeals' Decision was contrary to facts, law, and jurisprudence.

OUR RULING

The accused is acquitted of the crime charged for failure of the prosecution to prove his guilt beyond reasonable doubt.

Various irregularities in the conduct of the buy-bust operation and the processing of the evidence in the present case have left the case against the accused too weak to overcome the presumption of innocence in his favor.

The ***first irregularity*** attaches to the Pre-Operation Report/Coordination Sheet, which is intended to show the coordination between the PDEA and the police. Its importance lies in the fact that RA No. 9165 mandates close coordination between

the Philippine National Police/National Bureau of Investigation and the PDEA on all drug-related matters, including investigations on violations of RA No. 9165, with the PDEA as the lead agency.^[26]

In the case at bar, the original Pre-Operation Report/Coordination Sheet was not presented in court and the records contain only a photocopy thereof, provisionally marked Exhibit "D." Caution must be made that the failure of the prosecution to present the Pre-Operation Report, by itself, is not fatal to the prosecution's cause.

^[27] Even if the Pre-Operation Report/Coordination Sheet was properly presented in evidence, however, it is suspect as it was apparently accomplished and sent to PDEA hours *before* the informant arrived to give the police any information about the alleged illegal drug activity of Martin. SPO1 Mora variably testified that the confidential informant came to their office at 5 p.m. or 5:30 p.m. of 6 November 2006. Meanwhile, from the three faint stamps marked on the face of the Pre-Operation Report/Coordination Sheet, it was received by PDEA-MMRO either at 1:30 p.m., 1:40 p.m. or 2:00 p.m. of 6 November 2006.

Second, the actual marked money was likewise not presented in evidence^[28] since SPO1 Mora could no longer locate the marked money^[29] after he probably turned it over to the Investigator who photocopied it.^[30] While the Court has also had occasion to hold that presentation of the buy-bust money, as a lone defect, is not indispensable to the prosecution of a drug case,^[31] again it raises doubts regarding the regularity of the buy-bust operation.

Third, the police officer did not comply with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165^[32] and its corresponding Implementing Rules^[33] without giving any reasonable excuse for the lapse. When confronted with the fact that they have not complied with the procedure for seizure of evidence laid out in Section 21 of R.A. No. 9165, SPO1 Mora testified:

Asst. Pros. Yap:

Q Now you said the marking was made by the Investigator. Why did you not mark the specimen at the scene of the transaction?

Witness:

A Because the Investigator will make an inventory regarding the recovered evidence and other pertinent documents, sir.

Asst. Pros. Yap:

That would be all, your Honor.

COURT:

Cross.

Atty. Cabrera:

With the kind permission of this Honorable Court.

Q Why did you not mark the specimen at the crime scene, you were not following the guidelines under the rules?

A Because it was not properly implemented yet those guidelines of RA 9165, sir.^[34]

While noncompliance with the procedure laid out in Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case because the last sentence of the implementing rules provides that "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items," nevertheless, lapses in procedure "must be recognized and explained in terms of their justifiable grounds and the integrity and evidentiary value of the evidence seized must be shown to have been preserved."^[35] Otherwise, the procedure set out in the law will be mere lip service.

In the present case, it was not shown that the police officers intended to comply with the procedure but were thwarted by some justifiable consideration/reason. The only "reason" the police officers gave for not complying with the guidelines does not even hold water. The police justified their non-compliance with the procedure laid down in RA No. 9165 allegedly because these have not yet been "properly implemented" at the time. In truth, however, the implementing guidelines for R.A. No. 9165 took effect on November 27, 2002 while the arrest took place about four years later, or on 6 November 2006.

Fourth, the prosecution failed to establish the "chain of custody"^[36] of the seized item. After the buy-bust operation, the police officers proceeded to the DAID office where they turned over the sachet and (probably) the marked money to the Investigator.^[37] It was this unidentified "investigator" who marked the *corpus delicti* (plastic sachet) and who had custody of both the *corpus delicti* and the marked money. Apparently, it was also he who turned over the plastic sachet to the Crime Laboratory for testing.^[38] However, he was not presented to testify as to the marking of the sachet, the whereabouts of the marked money and the completion of the chain of custody of the evidence from SPO1 Mora to the Crime Laboratory.

Various reasons exist why failure to establish the chain of custody in a narcotics case, such as the case at bar, is fatal to the prosecution's case. As the Court exhaustively explained in *Carino v. People*,^[39]

While a 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. The same standard likewise obtains in