



Republic of the Philippines
Supreme Court

Manila

SECOND DIVISION

PEOPLE OF THE G.R. No. 194382
PHILIPPINES,

Plaintiff-Appellee, Present:

BRION,* J.,
Acting Chairperson,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, and
LEONEN,** JJ.

-versus-

Promulgated:

GLORIA CALUMBRES y AUDITOR,
Accused-Appellant.

JUN 10 2013 *HON. Calumbres y Auditor*

X -----

DECISION

PEREZ, J.:

This is an appeal from the 25 August 2010 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00242-MIN entitled *People of the Philippines v. Gloria Calumbres y Auditor*, affirming the 16 May 2005 Judgment in Criminal Case No. 2004-293 of the Regional Trial Court (RTC), Branch 25, Cagayan de Oro City. The RTC found accused guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, in an Information which alleged –

That on April 6, 2004 at about 5:30 o'clock in the afternoon at Sto. Niño, Barangay 31, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused without being authorized by law, did then and there wilfully, unlawfully and criminally sell, trade, dispense, deliver, distribute, and give away to another (1) heat-sealed transparent plastic sachet containing Methamphetamine Hydrochloride locally known as shabu weighing 0.09 gram[,] accused knowing the same to be a dangerous drug, in consideration of the amount of One Hundred Pesos (Php 100.00) in different denominations one of which is a Twenty Peso bill with serial Number EZ203528.¹

* Per Special Order No. 1460 dated 29 May 2013.

** Per Special Order No. 1461 dated 29 May 2013.

¹ CA rollo, p. 48.

As summarized in the appealed Court of Appeals decision, the facts are as follows:

On 6 April 2004, at around 5:30 p.m., SPO1 Reynaldo Dela Victoria (SPO1 Dela Victoria), the prosecution's lone witness, was in his office at the Special Operation Unit of the City Drug Enforcement Unit at the Cogon Public Market in Cagayan de Oro City when an informant reported to him that someone was selling *shabu* at Sto. Niño, Brgy. 31.

SPO1 Dela Victoria then hired a *faux*-buyer, giving the latter five twenty-peso bills marked money, and, riding a *trisikad*, the duo proceeded to the area that the informant described. SPO1 Dela Victoria claimed to have positioned himself at a strategic place where he could see the transaction. He saw his *poseur*-buyer handing something to Gloria Calumbres (Calumbres) after receiving something from the latter; the *poseur*-buyer's pre-arranged signal followed, prompting him to immediately approach Calumbres. He ordered her not to move, "*police mi, ayaw lihok*," shocking the accused into disbelief. He took the money from Calumbres and retrieved the suspected *shabu* from the *faux*-buyer who was standing two meters away.

SPO1 Dela Victoria brought Calumbres to his office at the Cogon Market for booking. He claimed he recorded the incident in the police blotter, prepared a request for laboratory analysis of the confiscated item and allegedly took a photograph, which, according to his testimony, was not developed, however, due to budget constraints.¹

A laboratory report on the confiscated item showed the white substance to be *shabu*.

Calumbres maintained her innocence and presented this defense:

Calumbres was at the ACCP Used Clothing Enterprise (*ukay-ukay*) when she snatched a wallet of a man, a customer of the store. She was caught, however, when the man's wife saw what she did. She was brought to the police station at Precinct 2 in the Cogon Market where Police Inspector Celso Montel interrogated her.

¹ Id. at 49-50.

Minutes later, SPO1 Dela Victoria arrived. He investigated her and told her he was the one in charge in the security of the area where she snatched the wallet. He promised her release if she would give him three cell-phone units. At that time, however, she had none. She just arrived from Iligan City and the man from whom she snatched the wallet was supposedly her first victim.

Calumbres' defense was corroborated by Relian Abarrientos (Abarrientos), a store employee who witnessed the whole incident. Abarrientos testified that in April 2004, a woman tried to snatch a wallet from a man inside the store. The man's wife caught her and the snatcher was detained at the Cogon Police Station. Abarrientos claimed that this was the only incident that happened in the store.

The RTC convicted Calumbres as charged and sentenced her to life imprisonment, thus:

WHEREFORE, in the light of the foregoing consideration, this Court hereby finds the accused Gloria Calumbres y Auditor GUILTY beyond reasonable doubt of the crime charged in the information and sentences the accused GLORIA CALUMBRES y AUDITOR to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php 500,000.00).²

Finding no reversible error in the RTC ruling, the Court of Appeals affirmed the trial court's decision; hence, this appeal on the following grounds: *first*, the prosecution failed to prove the accused's guilt beyond reasonable doubt; *second*, the police failed to follow the chain of custody rule as required under Section 21(1), Article II of Republic Act No. 9167.

RULING OF THE COURT

We resolve to **ACQUIT** Calumbres on the following grounds:

While it is hornbook doctrine that the evaluation of the trial court on the credibility of the witness and the testimony is entitled to great weight and is generally not disturbed upon appeal, such rule does not apply when the trial court overlooked, misapprehended, or misapplied facts of weight or

² Id. at 55-56.

substance that would point to a different conclusion. In the instant case, these circumstances are present, that, when properly appreciated, would warrant the acquittal of the accused.

First, that Calumbres was arrested and brought to Precinct 2 at the Cogon Police Station, after she was caught snatching a man's wallet, was duly recorded in its police blotter.³ The police blotter shows that she was arrested due to pickpocketing, a fact which was also corroborated by the testimony in open court of the store-employee who witnessed the whole incident.

The circumstance of Calumbres' arrest and the charge as reflected in the police blotter at Precinct 2 which was for pickpocketing, when compared to the succeeding charge for the sale of illegal drugs which was blotted at the Special Operation Unit of the City Drug Enforcement Unit casts serious doubt as to her culpability to the crime of illegal sale of *shabu*. The same crimes were committed and blotted on the same day, separated only by hours. There was no record that while in custody in the police station that she was released. Rather, the succeeding records reveal that she was already being charged for illegal sale of *shabu*, this time at the Special Operation Unit of the City Drug Enforcement Unit, which happens to be also located in Cogon Market.

Second, SPO1 Dela Victoria's credibility must be thoroughly looked into, being the lone arresting officer who allegedly took custody of the confiscated *shabu* and the five twenty-peso bills supposedly used by his *poseur*-buyer to buy the *shabu* from Calumbres. It did not escape us that while there were five 20-peso bills used, only one of them was presented in court. SPO1 Dela Victoria also claimed to have taken a photograph of the confiscated items but he failed to present it in court on the lame excuse that there was no money to have the picture developed; and, alone, he inventoried these items without the participation of the accused and in the absence of the authorities, in blatant disregard of Section 21, Article II of Republic Act No. 9165.

The details of SPO1 Dela Victoria's testimony reveal lapses too, which, if connected, cast reasonable doubt on the guilt of Calumbres. His informant never identified Calumbres as the drug pusher; what his informant

³ Id. at 51.

told him was that drug sale was ongoing at Sto. Nino, *Brgy.* 31, prompting him to hire a *faux*-buyer.⁴ At that time, the information was still unverified and the seller of *shabu* unidentified. Without the informant's details of who the pusher was, it was incomprehensible how a *poseur*-buyer, randomly and instantly hired, would have been able to identify Calumbres as the pusher.

Third, a reading of the RTC decision on this matter reveals that the conviction was arrived at upon reliance on the presumption of regularity in the performance of SPO1 Dela Victoria's official duty.

It is noteworthy however, that presumption of regularity in the performance of official functions cannot by its lonesome overcome the constitutional presumption of innocence.⁵ Nothing less than evidence of guilt beyond reasonable doubt can erase the postulate of innocence. And this burden is met not by placing in distrust the innocence of the accused but by obliterating all doubts as to his culpability.⁶

The solo performance by SPO1 Dela Victoria of all the acts necessary for the prosecution of the offense is unexplained and puts the proof of *corpus delicti*, which is the illegal object itself, in serious doubt. No definite answer can be established regarding the question as to who possessed what from the time of the alleged apprehension until the trial of the case. We are left in doubt whether or not the sachet of *shabu* allegedly seized from Calumbres was the very same object offered in court as the *corpus delicti*, or if a sachet of anything was in fact seized from Calumbres.

As we held in *Zafra v. People*:

Prosecutions for illegal possession of prohibited drugs necessitates that the elemental act of possession of a prohibited substance be established with moral certainty. The dangerous drug itself constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to a judgment of conviction. Essential therefore in these cases is that the identity of the prohibited drug be established beyond doubt. Be that as it may, the mere fact of unauthorized possession will not suffice to create in

⁴ Id. at 49.

⁵ *Zafra v. People*, G.R. No. 190749, 25 April 2012, 671 SCRA 396, 404.

⁶ Id.

a reasonable mind the moral certainty required to sustain a finding of guilt. More than just the fact of possession, the fact that the substance illegally possessed in the first place is the same substance offered in court as exhibit must also be established with the same unwavering exactitude as that requisite to make a finding of guilt. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.⁷

Section 21, paragraph 1, Article II of Republic Act No. 9165 reads:

(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.** (Emphasis supplied).

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 reads:

(a) 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:** *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, 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. (Emphasis supplied).

SPO1 Dela Victoria's claim that the sachet of *shabu* presented in court was the same one confiscated from Calumbres, cannot be taken at its face value, solely on the presumption of regularity of one's performance of

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Id. at 405.

duty. SPO1 Dela Victoria blatantly broke all the rules established by law to safeguard the identity of a *corpus delicti*. To allow this to happen is to abandon everything that has been said about the necessity of proving an unbroken chain of custody of the *corpus delicti*.

We reiterate that this Court will never waver in ensuring that the prescribed procedures in the handling of the seized drugs should be observed. In *People v. Salonga*,⁸ we acquitted the accused for the failure of the police to inventory and photograph the confiscated items. We also reversed a conviction in *People v. Gutierrez*,⁹ for the failure of the buy-bust team to inventory and photograph the seized items without justifiable grounds. *People v. Cantalejo*¹⁰ also resulted in an acquittal because no inventory or photograph was ever made by the police.

We reached the same conclusions in the recent cases of *People v. Capuno*,¹¹ *People v. Lorena*,¹² and *People v. Martinez*,¹³ all in obedience to the basic and elementary precept that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. At the base, of course, is the constitutional presumption of innocence unless and until the contrary is shown.

WHEREFORE, premises considered, we **REVERSE and SET ASIDE** the Decision of the Court of Appeals dated 25 August 2010 in CA-G.R. CR-HC No. 00242-MIN. Gloria Calumbres y Auditor is hereby **ACQUITTED** for the failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered immediately **RELEASED** from detention, unless she is confined for another lawful cause.

⁸ G.R. No. 186390, 2 October 2009, 602 SCRA 783, 794-795.

⁹ G.R. No. 179213, 3 September 2009, 598 SCRA 92, 101.

¹⁰ G.R. No. 182790, 24 April 2009, 586 SCRA 777, 783-784.

¹¹ G.R. No. 185715, 19 January 2011, 640 SCRA 233.

¹² G.R. No. 184954, 10 January 2011, 639 SCRA 139.

¹³ G.R. No. 191366, 13 December 2010, 637 SCRA 791.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women, Mandaluyong City, for immediate implementation. The Superintendent of the Correctional Institution for Women is directed to report to this Court the action taken within five (5) days from receipt of this Decision.

SO ORDERED.



JOSE PORTUGALBEREZ
Associate Justice

WE CONCUR:



ARTURO D. BRION
Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION


I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice