

THIRD DIVISION

[G.R. No. 186390, October 02, 2009]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROSEMARIE R. SALONGA, ACCUSED-APPELLANT.**

D E C I S I O N

VELASCO JR., J.:

This is an appeal from the August 29, 2008 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02887 entitled *People of the Philippines v. Rosemarie R. Salonga* which affirmed the June 27, 2007 Decision of the Regional Trial Court (RTC), Branch 80 in Criminal Case No. Q-02-110989 for Violation of Section 5 of Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Accused-appellant was charged for two different offenses, as quoted in the following Informations:

Criminal Case No. Q-02-110988

That on or about the 31st of July 2002 in Quezon City, Philippines, the said accused, not being authorized by law to possess or use any dangerous drug, did, then and there, willfully, unlawfully and knowingly possess, sniff and/or use and under [her] control zero point zero seven (0.07) gram of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[1]

Criminal Case No. Q-02-110989

That on or about the 31st day of July 2002, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, ZERO POINT ZERO SIX (0.06) grams of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[2]

Upon the consolidation of the two cases, a joint trial was conducted by the trial

court. Accused-appellant pleaded not guilty to both charges.

The Prosecution's Version of Facts

The sole witness for the prosecution was PO1 Teresita Reyes (PO1 Reyes). A stipulation was agreed on by the parties with regard to the testimony of Forensic Chemical Officer Leonard T. Arban.

At the hearing on July 28, 2003, PO1 Reyes recalled that an informant arrived at their office on July 30, 2002. Their Police Chief, Col. Pareño, subsequently instructed them to form a buy-bust team in *Barangay* Sto. Domingo in Quezon City with one "alyas Marie" as the subject.^[3] Their team was composed of PO1 Reyes as the poseur-buyer, SPO1 Arcoy as team leader, and the confidential informant. Upon their arrival at dawn the next day, PO1 Reyes told "alyas Marie" that she was interested in buying *shabu* worth two hundred pesos. During the exchange she paid with two hundred peso marked bills.^[4] "Alyas Marie" gave her two small plastic sachets in return. At this point, PO1 Reyes raised her hand to signal the consummation of the transaction. SPO2 Nebres took hold of Marie and recovered the buy-bust money from her. Back at Camp Karingal she was turned over to the desk officer. PO1 Reyes marked the two sachets she received with the initials "TBR-RRS."^[5] "Alyas Marie" was found to be accused-appellant Rosemarie Salonga.^[6]

Evidence for the Defense

Accused-appellant resolutely denied having sold *shabu* to the poseur-buyer. She likewise declared that the police did not recover any *shabu* from her. According to her, PO1 Reyes, PO2 Nebres, and SPO1 Arcoy barged into her house on July 31, 2002. They dragged her outside while she struggled. When asked why they were accosting her, the police officers just told her to do her explaining at Camp Karingal. Once there, PO1 Reyes frisked her and he later brought out *shabu* that had come from him and told her that the illegal drug came from her. Accused-appellant cried and was angered at the police officers' false accusations. She was then detained. The next day, she was charged with violation of RA 9165. Later, when her sister came to visit her in jail, the police told them to settle the case "through financial means."^[7]

The Ruling of the Trial Court

After a trial on the merits, the RTC acquitted accused-appellant on the drug possession charge but convicted her on drug pushing. The trial court exonerated accused-appellant on the possession charge as the police officer who recovered the two sachets of *shabu* was already dead and could not testify on the seizure. The sole witness, PO1 Reyes, did not see the actual confiscation of the *shabu*. The RTC, however, found PO1 Reyes' testimony, though uncorroborated, to have sufficiently established the elements of the offense with regard to drug pushing.

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

a) In Criminal Case No. Q-02-110989, the Court finds the accused GUILTY beyond reasonable doubt of the crime charged. Accordingly, she is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00; and

b) In Criminal Case No. Q-02-110988. Accused is ACQUITTED of the crime for insufficiency of evidence.

x x x x

SO ORDERED.^[8]

The Ruling of the CA

On appeal, the CA affirmed the RTC Decision in its entirety.^[9] It held that the elements of the offense under RA 9165 had been adequately shown by the prosecution. It found that the chain of custody over the subject specimen was amply established and the defense of frame-up was unavailing.

Accused-appellant filed a timely Notice of Appeal before this Court.

On March 30, 2009, this Court directed the parties to submit supplemental briefs if they so desired. The parties manifested that they were no longer submitting additional briefs.

The Issues

I

WHETHER THE COURT A QUO GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED

II

WHETHER THE COURT A QUO GRAVELY ERRED IN FINDING THAT THE PROCEDURE FOR THE CUSTODY AND CONTROL OF PROHIBITED DRUGS WAS COMPLIED WITH

The defense claims that since no one else could corroborate PO1 Reyes' testimony, the lower court should have given emphasis on the version of the defense that no buy-bust operation took place and that the plastic sachet of *shabu* was only shown to accused-appellant inside Camp Karingal.

The defense also argues that the first link in the chain of custody of the seized drugs was not shown, thus giving serious doubts about its identity. They insist that no proof was shown that the police officers marked the confiscated drug where it was seized. There is, thus, uncertainty as to whether the seized *shabu* was the same specimen forwarded by the police officers to the crime laboratory and subsequently

presented during trial.

The issues raised are interrelated and need to be jointly discussed.

Accused-appellant relies solely on her word against that of the police officers, who are presumed to have done their official duties in a regular manner. As a general rule, the testimony of the police officers who apprehended the accused is usually accorded full faith and credit because of the presumption that they have performed their duties regularly. But when the performance of their duties is tainted with irregularities, such presumption is effectively destroyed.^[10]

We find in the instant case that there are circumstances which serve to successfully dispute the presumption normally accorded to law enforcement officers.

RA 9165 and its implementing rules require the buy-bust team to mark all seized evidence at the buy-bust scene. This, the buy-bust team led by SPO1 Arcoy failed to do.

Sec. 21(a), Art. II of the Implementing Rules and Regulations of RA 9165 provides:

(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, 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.)

The records reveal the non-compliance with RA 9165, as follows:

DIRECT EXAMINATION OF SPO1 REYES

Q When you said that you were interested to buy two hundred pesos worth of shabu, what did alyas Marie do?

A She took my money.

Q And what did she do after getting your money?

A After that she handed to me two pieces of [a] small plastic sachet.

Q What were contained in those two small pieces of plastic sachet?

A The one I bought from her.

Q And after you received those two (2) plastic [sachets], what else did you do?

A After that I gave my [pre-arranged] signal by raising my hand.

Q And what happened after you raised your right hand as your [pre-arranged] signal?

A My companions arrived.

Q What happened after they arrived?

A We were able to arrest Marie.

Q Who took hold of Marie?

A SPO2 Nebres.

Q And what happened to the buy bust money you gave?

A Nebres [was] able to recover the [buy bust] money from Marie.^[11]

x x x
x

CROSS-EXAMINATION OF SPO1 REYES

Q But prior to that, Madam witness, did you coordinate with the Barangay Captain or Brgy. Operation of Sto. Domingo before you went there?

A **No, sir.**

Q And is it not a fact that it is an SOP in the conduct of buy-bust operation[s] to have a coordination before you conduct a buy bust operation[?] [P]lease answer it by yes or no. It is SOP in the conduct of buy-bust operation[s] that there has to be [c]oordination first?

A It was the TOC who dispatch[ed] [us] and who made the call to hold on to the police station.

x x x
x

CROSS-EXAMINATION OF SPO1 REYES

Q Madam Witness, when you allegedly recovered these sachets from the accused, did you submit your inventory