

SEVENTEENTH DIVISION

[CA-G.R. CR No. 34509, February 18, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FERDINAND LOPEZ Y HENRY, ACCUSED-APPELLANT.**

DECISION

GARCIA, R. R. J.:

Before Us is an appeal from the Judgment^[1] dated February 28, 2011 of the Regional Trial Court, Branch 35, Calamba City in Criminal Case No. 13704-05-C finding herein accused-appellant Ferdinand Lopez y Henry guilty beyond reasonable doubt of the crime of illegal possession of zero point two three (0.23) gram of *methamphetamine hydrochloride* or *shabu*, defined and penalized under Section 11, Article II of RA No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*, and imposing upon him the penalty of imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months; and to pay a fine in the amount of Three Hundred Thousand Pesos (P300,000.00), the dispositive portion of which reads:

WHEREFORE, premises considered, the Court finds the accused, Ferdinand H. Lopez, GUILTY beyond reasonable doubt of the crime of violation of Sec. 11 of R.A. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and sentencing [him] to suffer imprisonment of twelve (12) years and one (1) day to fourteen (14) years and eight (8) months and to pay a fine of three hundred thousand pesos (P300,000.00).

The subject prohibited drug is hereby ordered confiscated in favor of the government, and should be turned over to the Philippine Drug Enforcement Agency for disposition in accordance with law.

SO ORDERED.^[2]

THE FACTS

In an Information^[3] dated September 23, 2005, appellant Ferdinand Lopez y Henry was charged with violation of Section 11, Article II of RA No. 9165 committed as follows:

That on or about August 24, 2005 at Brgy. Timugan, Municipality of Los Baños, Province of Laguna and within the jurisdiction of this Honorable Court, the above-named accused, not being licensed or authorized by law did then and there willfully, unlawfully and feloniously have in his possession, custody and control four (4) small heat-sealed transparent plastic sachets containing Methamphetamine Hydrochloride also known as shabu a prohibited drug, weighing 0.23 gram, and several other

plastic sachets with traces of shabu in violation of the aforementioned provision of law.

CONTRARY TO LAW.^[4]

During the arraignment on October 25, 2006, appellant, with the assistance of counsel, pleaded *not guilty*.^[5] Thereafter, trial on the merits ensued.

The prosecution presented two (2) witnesses, namely: PO2 Odilon^[6] Ilagan^[7]; and SPO2 Danilo Satuito^[8].

The testimony of Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas was dispensed with after the parties stipulated as to the genuineness and due execution of Chemistry Report Number D-952-05^[9] dated August 28, 2005.^[10]

The version of the prosecution may be summarized as follows:

On August 24, 2005, at around 7:00 pm., the Los Baños Police Station received an information from an asset that there was a group of persons who were repacking *shabu* at the house owned by appellant Ferdinand Lopez in *Barangay* Timugan, Los Baños, Laguna. Consequently, the police chief sent SPO2 Danilo Satuito and PO2 Odilon Valencia Ilagan with the asset in order to verify the report.

On that same day of August 25, 2005, at around 8:00 pm, the police asset led PO2 Odilon Valencia Ilagan and SPO2 Danilo Satuito to a *nipa* hut which has an open terrace in front. The terrace was only three (3) meters away from the *barangay* road but was somewhat obscured by plants. The police officers saw three (3) men in the terrace, later identified as appellant, Mark^[11] Sombillo, and Rizaldo San Valentin. The men were in the act of repacking *shabu*. Appellant specifically was refilling a sachet while holding a pair of scissors. Sombillo was also holding a plastic sachet, while San Valentin was merely standing around.

Convinced that the three (3) men were committing a crime in plain view, PO2 Odilon Ilagan and SPO2 Danilo Satuito immediately arrested appellant and Rizaldo San Valentin. Unfortunately, their companion Mark Sombillo was able to get away. Appellant and San Valentin were taken to the Los Baños Police Station, along with the illegal contraband confiscated from them as follows: four (4) heat-sealed plastic sachets containing white crystalline substance suspected to be *shabu*; sixteen (16) other plastic sachets containing only traces of white crystalline substance suspected to be *shabu*, or a total of twenty (20) sachets. Also confiscated from appellants were: a bamboo tweezer; two (2) lighters; a pair of scissors; a bundle of forty-three (43) plastic bags; and two (2) strips of crumpled foil.^[12]

PO2 Odilon Ilagan testified that he marked the confiscated *shabu* with his initials "OVI". Thereafter, he prepared a request that the same be forwarded to the PNP Crime Laboratory for examination. In open court, however, he identified four (4) sachets as among those he confiscated from appellant, one of which was marked "TMN-18".

The records show that the delivery to the PNP Crime Laboratory in Camp San Vicente, Calamba City was effected four (4) days after appellant's arrest, or on

August 28, 2005. Twenty (20) sachets marked "TMN-1" to "TMN-19", inclusive, and "TMG-2" were delivered by a certain PO2 Dreje, as evidenced by a Request for Laboratory Examination^[13] dated August 24, 2005.

In Chemistry Report Number D-952-05^[14] dated August 29, 2005, Forensic Chemist Police Senior Inspector Donna Villa P. Huelgas found that the plastic sachets marked "TMN-1", "TMG-2", "TMN-18", and "TMN-19" gave positive result for *Methamphetamine hydrochloride*, also known as *shabu*, weighing zero point zero five (0.05) gram, zero point zero four (0.04) gram, zero point zero four (0.04) gram, and zero point ten (0.10) gram, respectively, or a total of zero point two three (0.23) gram. The remaining sixteen (16) plastic sachets marked "TMN-2" to "TMN-17", inclusive, all of which contained traces of white crystalline substance, also tested positive for *Methamphetamine hydrochloride*.

While criminal complaints were filed against appellant and his companions Rizaldo San Valentin and Mark Sombillo, the Office of the Provincial Prosecutor of Calamba City found probable cause only against appellant and thereafter dismissed the case against San Valentin and Sombillo.^[15]

For the defense, two (2) witnesses were presented, namely: appellant^[16] himself; and his wife Carmelita Lopez^[17].

Appellant raised the defense of denial and frame-up. In the evening of August 24, 2005, he was eating dinner inside his house with his wife Carmelita. At around 7:50 pm, Mark Sombillo arrived at his house to repair appellant's broken cellular phone. Minutes later, Rizaldo San Valentin arrived because he, too, had a cellular phone for repair. Because of the heat, the door of his house was opened. All of a sudden, a man wearing a blue shirt with the word "PULIS" printed on it entered the house. The man, later identified as PO2 Odilon Ilagan, drew a gun and shouted "*ikaw ba si Eddie Lopez na binayaran ni Erwin Banzon para pumatay sa akin*"^[18]? Appellant denied PO2 Ilagan's allegations. However, two (2) more men arrived, one of whom was holding a black box while the other was later identified as SPO2 Danilo Satuito. The police officers then took appellant to the police station, insisting that he was the one who was hired to kill PO2 Ilagan.

The testimony of appellant was corroborated by his wife Carmelita Lopez who testified that on August 24, 2005, she was at home watching television. With her were appellant, Rizaldo San Valentin and Mark Sombillo, the latter was repairing appellant's broken cellular phone. At around 7:30 to 8:00 pm, PO2 Odilon Ilagan entered the house with a gun. PO2 Ilagan asked if appellant was the one paid by a certain Erwin Banzon to kill the former. Appellant denied the charge but he was still hauled to the police station.

In the assailed Judgment^[19] dated February 28, 2011, the court *a quo* found appellant guilty beyond reasonable doubt of the crime of illegal possession of dangerous drugs. It gave credence to the testimonies of the prosecution witnesses that appellant was seen *in flagrante delicto* repacking *shabu* into smaller sachets in the terrace of his house in plain view of the police officers. The pertinent portions of the decision are quoted:

From the evidence presented, it was established on 24 August 2005, SPO2 Satuito, PO2 Ilagan and several police officers were in the police station when they received information that three (3) persons were packing shabu inside the house of Ferdinand Lopez located at Barangay Timugan, Los Baños, Laguna. At around 8:00 in the evening, SPO2 Satuito and PO2 Odelon Ilagan proceeded to the target area to conduct surveillance operation to verify if the information was true. When they arrived, SPO2 Satuito and PO2 Ilagan saw three (3) persons in front of the extension of the house of Ferdinand Lopez, "sa harapan ng kubo." The three were packing shabu. The three (3) were identified as Ferdinand Lopez, Mark Sombillo and Rizaldo San Valentin. Upon seeing this, SPO2 Satuito and his companion immediately arrested the three. SPO2 Satuito and his companion also confiscated the black box, two (2) lighters, an improvised bamboo clip, bundles of small plastic sachets of shabu collectively marked. Inside the black box are three (3) pieces of crumpled aluminum foils. The plastic sachets with marking "TMN-1" to "TMN-18" were sent to the PNP crime laboratory for examination. Chemistry Report Number D-925-05 revealed that the plastic sachets were found positive for methamphetamine hydrochloride, a dangerous drug.

From the foregoing, there is no doubt that Ferdinand Lopez was indeed in possession of the dangerous drug when he and two others were arrested by PO2 Ilagan, SPO2 Satuito and several police officers on 24 August 2005.

Accused Ferdinand Lopez denied the accusation against him. He alleged that on 24 August 2005, at around 7:30 in the evening, he, Rizaldo San Valentin and Carmelita Lopez were watching Mark Sombillo fix Ferdinand's cellphone inside the house of Ferdinand when suddenly armed men arrived and arrested them. In effect, Ferdinand want to impress before this Court that he was framed and the plastic sachet found in his possession was planted. The Court, however, is not impressed.

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In the present case, the Court finds that police officers were performing their duty on 24 August 2005. Being police officers, they were tasked to monitor and apprehend illegal activities in the barangay. Based on the information that three (3) persons were packing shabu inside the extension of Ferdinand's house, SPO2 Satuito and PO2 Ilagan were tasked to determine the veracity of the information. During their operation, SPO2 Satuito and PO1 Ilagan positively saw Ferdinand, Mark Sombillo and Rizaldo San Valentin were indeed packing shabu.

The Court likewise found no improper motive on the part of the police officers as prior to 24 August 2005, Ferdinand did not know the police officers. Accordingly, the police officers' testimonies with respect to the surveillance operation, subsequent arrest of the accused and the seizure of the regulated drug in accused's possession must be accorded full faith and credence.^[20]

Hence, this appeal in which appellant raised the lone **ASSIGNMENT OF ERROR**^[21], to wit:

THE COURT A QUO GRAVELY ERRED IN CONVICTING APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE SEIZED SHABU.

THE ISSUE

The sole issue in the instant case is whether or not the court *a quo* correctly found appellant guilty beyond reasonable doubt of the crime of illegal possession of zero point two three (0.23) gram of *shabu*.

THE RULING

The instant appeal is impressed with merit.

Appellant contends that the court *a quo* gravely erred in convicting him of illegal possession of dangerous drugs despite the prosecution's failure to establish the chain custody of the seized *shabu*. This was clearly demonstrated by the fact that arresting officer PO2 Odilon Ilagan testified that he marked the sachets containing the seized *shabu* with his initials "OVI". During the hearing, however, what was presented and identified by him were sachets marked "TMN-1" to "TMN-19", inclusive, and "TMG".

We agree.

In the prosecution of illegal possession of dangerous drugs, the dangerous drug itself constitutes the very *corpus delicti* of the offense and, in sustaining a conviction therefor, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. To remove any doubt or uncertainty on the identity and integrity of the seized drug, the evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant; otherwise, the prosecution for illegal possession of dangerous drugs under R.A. No. 9165 fails.^[22]

In order to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court, the chain of custody must be maintained. The chain of custody is basically the duly recorded authorized stages of transfer of custody of seized dangerous drugs, from their seizure or confiscation to receipt thereof in the forensic laboratory for examination to safekeeping to presentation in court for destruction.^[23]

In order to establish the chain of custody, the following links must be established: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.^[24]