

EIGHTH DIVISION

[CA-G.R. CR NO. 34269, February 12, 2014]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF- APPELLEE, VS.
CARMEN MAGTOTO Y MEDINA AND RODRIGO PERALTA,
ACCUSED, CARMEN MAGTOTO Y MEDINA, ACCUSED-APPELLANT.**

D E C I S I O N

REYES, JR., J.C., J.:

Carmen Magtoto y Medina (appellant) is before the Court assailing the Joint Decision dated April 28, 2010 of the Regional Trial Court (RTC) Branch 16 of Manila, in Crim. Case Nos. 04-228879-80 which imposed on her the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and fine of One Hundred Thousand Pesos (P100,000.00), and imprisonment of six (6) months and one (1) day to four (4) years and fine of Ten Thousand (P10,000.00), respectively, for possessing illegal drugs in violation of Republic Act (R.A.) No. 9165 otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Information filed against appellant on August 4, 2004 charged her and her co-accused Rodrigo Peralta y Ligo (Peralta) of violating Section 11 (3), Article 2, of R.A. No. 9165 as follows:

“That on or about August 1, 2004, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in possession and under their custody and control two (2) heat-sealed transparent sachets with marking “CCM”and “RPL” containing, to wit:

Zero point zero one nine (0.019) gram and
Zero point zero three six (0.036) gram

of white crystalline substance known as “shabu” containing methylamphetamine hydrochloride, a dangerous drug.

Contrary to law.” (Records, p. 2).

Both accused pleaded “not guilty”. (Records, pp. 56-58).

At the trial, Police Officers PO2 Jesus De Leon, PO2 Teodorico Arabe,^[1] and PO3 Antonio Cruz testified that they were ordered by their chief on August 1, 2004, to conduct surveillance in Sto. Rosario St., Tondo, Manila^[2] regarding the rampant selling of shabu by a certain Carling Sumaway. The police were on their way to the street where Sumaway was allegedly selling drugs when they chanced upon appellant and Peralta. PO Cruz was about five meters from appellant when he saw her sell drugs to Peralta. PO Cruz immediately held appellant, while another officer held Peralta. PO Cruz recovered from the left hand of appellant, a plastic sachet

containing shabu, two disposable lighters and four aluminum foils. (Records, pp. 138-139; TSN, PO3 Antonio Cruz, February 15, 2007, pp. 3-5)

Appellant for her part testified that around 2 p.m. on August 1, 2004, she was taking a bath when several police men entered their house and told her to get dressed. Appellant's brother asked the police if they have a warrant of arrest but they could not produce any. The police asked her to go with them saying they were just going to ask her some questions. They stayed at Simon Street before they proceeded to the police station. With her was Peralta, a neighbor who was just buying bread when he was arrested. Peralta died sometime in 2009. At the station, she was told to change her wet clothes. A plastic sachet of shabu, which does not belong to her, was also presented to her. She also averred that the disposable lighter and aluminum foil were taken from her house but it probably belonged to her sister Henrietta, who used to be a drug-user. Appellant admitted having taken drugs when she was eighteen years old but claimed to have stopped because of asthma. She became a widow with three school children in 1998. She lives with her mother and helps in selling vegetables to earn money for her children. (TSN, March 18, 2010, pp. 3-11).

On cross-examination, she stated that she knows PO Arabe because he maltreated her brother-in-law, which incident is now subject of an investigation. She also admitted that her family is known by police officers because her sister, Henrietta, used to sell shabu. (TSN, March 18, 2010, pp. 11-13).

On April 28, 2010, the RTC rendered the herein assailed Decision finding appellant and Peralta guilty as charged:

"WHEREFORE, prosecution having proven the guilt of the accused beyond reasonable doubt, CARMEN MAGTOTO and RODRIGO PERALTA, are hereby CONVICTED in Criminal Case Nos. 04-228879-80.

In Criminal Case No. 04-228879, (Section 11, RA 9165) accused CARMEN MAGTOTO and RODRIGO PERALTA are hereby sentenced to suffer the penalty of imprisonment of six (6) years and one (1) day to eight (8) years and to pay a fine of One Hundred Thousand Pesos (P100,000.00).

In Criminal Case No. 04-228880, (Section 12, RA 9165) accused CARMEN MAGTOTO is hereby sentenced to suffer the penalty of imprisonment of six (6) months and one (1) day to four (4) years and to pay a fine of Ten Thousand Pesos (P10,000.00).

The Branch Clerk, Atty. Rechie N. Ramos-Malabanan is ordered to turn over two (2) heat sealed transparent sachets with marking "CCM" and "RPL" containing Zero point zero one nine (0.019) gram and Zero point zero three six (0.036) gram of "shabu," four (4) strips of aluminum foil and two (2) disposable lighter to the Philippine Drug Enforcement Agency for proper disposition.

Warrants of Arrest against accused Peralta issued on February 1, 2007 are still valid.

The bonds posted by both accused are cancelled.

SO ORDERED.” (Rollo, pp. 27-28).

The RTC held that the prosecution was able to prove beyond reasonable doubt the elements of illegal possession of dangerous drugs. (Rollo, p. 25).

The appellant is now before the Court, through the Public Attorney's Office, claiming that the court a quo gravely erred:

I

...IN GIVING CREDENCE TO THE TESTIMONIES OF THE PROSECUTION WITNESSES.

II

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INADMISSIBILITY OF THE PLASTIC SACHETS.

III

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY OF THE ALLEGED SEIZED DANGEROUS DRUGS.

IV

...IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INHERENT WEAKNESS OF THE PROSECUTION EVIDENCE.(Rollo, pp. 87-88).

The appellant argues that there being no Pre-Operation/Coordination Report and no informant who should have accompanied the team, it would appear that the alleged surveillance was a mere alibi of the police to justify their presence at the scene. (Rollo, p. 93).

She also asserts that there were serious gaps in the chain of custody. The arresting officers did not mark the seized items at the place of arrest or at the police station; the investigator had no personal knowledge of the seized items' source; there were no photographs and inventory of the seized items and no explanation for such absence, and; the forensic chemist as well the person from whom she received the items for laboratory examination were not presented in court. (Rollo, pp. 93-94).

Finally the appellant argues that while denial and alibi are weak, such defenses assume importance when the prosecution is unable to establish her guilt beyond reasonable doubt. (Rollo, p. 94).

The Office of the Solicitor General, for the People, meanwhile argues that appellant's arrest and the seizure of shabu were justified under the “plain view doctrine.” The failure to photograph and conduct an inventory of the seized items in the manner prescribed by R.A. No. 9165 is not a ground to exonerate appellant from the charges against her as the identity and integrity of the evidence were preserved. The failure of the forensic chemist to testify also does not make the Chemistry Report hearsay. (Rollo, pp. 127-131).

The Court finds MERIT in the appeal.

It is a basic tenet in criminal law that an accused is presumed innocent unless the contrary is proven beyond reasonable doubt. The burden is on the prosecution to overcome the presumption, relying on the merits of its case and not on the weakness of the defense. If the prosecution fails to meet the amount of evidence required, the presumption of innocence of the accused prevails and he should necessarily be acquitted. (*People v. Clara*, G.R. No. 195528, July 24, 2013).

As a rule, findings of fact of trial courts are accorded weight and are not disturbed on appeal. There are exceptions however, such as when facts of weight and substance have been overlooked, misapprehended or misapplied. (*People v. Pepino-Consulta*, G.R. No. 191071, August 28, 2013).

Such is the case at bar.

In the prosecution for illegal possession of dangerous drugs, the following elements must be proven: (1) the accused is in possession of an item or an object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. (*People v. Guru*, 684 SCRA 544, 552-553 [2012])

For the prosecution of illegal possession of a dangerous drug, as with illegal sale, the corpus delicti of the offenses is the dangerous drug itself, in this case shabu. In sustaining a conviction under R.A. No. 9165, the identity and integrity of the corpus delicti must be shown to have been preserved. Such requirement necessarily comes from the illegal drug's unique characteristic which renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution. Thus, to remove any doubt on the identity and integrity of the seized drug, 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 possession under R.A. No. 9165 shall fail. (*People v. Pepino-Consulta*, G.R. No. 191071, August 28, 2013; *People v. Lapasaran*, 687 SCRA 663, 670-671 [2012]).

Section 21, paragraph 1, Article II of R. A. No. 9165 provides:

"SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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