

FIRST DIVISION

[G.R. No. 226152, March 13, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
LUISITO CARTINA Y GARCIA, ALLAN JEPEZ Y TUSCANO AND
NELSON RAMOS, JR. Y CARTINA, ACCUSED-APPELLANTS.**

D E C I S I O N

DEL CASTILLO, J.:

This is an appeal from the April 28, 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 07425, affirming with modification the February 18, 2015 Decision^[2] of the Regional Trial Court (RTC), Branch 64, Makati City in Criminal Case Nos. 12-1958 to 1959, 12-1960 and 12-1961.

Appellants Luisito Cartinay Garcia (Cartina), Allan Jepez y Tuscano (Jepez) and Nelson Ramos, Jr. y Cartina (Ramos, Jr.) were apprehended on two separate but related incidents on October 30, 2012 along Washington Street, *Barangay* Pio del Pilar, Makati City. The apprehending officers were members of a team of the Makati Anti-Drug Abuse Council (MADAC) tasked to conduct a buy-bust operation on Cartina who was reportedly engaged in illegal drug activities. After their arrest and investigation, Cartina was charged in two separate Informations with violation of Sections 5 and 11, Article II of Republic Act (RA) No. 9165^[3] while Jepez and Ramos, Jr., through separate Information, were each indicted for violation of Section 11, Article II of the same law.

The accusatory portion of the Information charging Cartina with violation of Section 5 reads as follows:

Criminal Case No. 12-1958:

On the 30th day of October 2012, in the city of Makati, the Philippines, accused, not being authorized by law, without the corresponding license and prescription, did then and there willfully, unlawfully and feloniously sell, deliver and distribute zero point zero two (0.02) gram of methamphetamine hydrochloride, a dangerous drug, in consideration of Php300.

CONTRARY TO LAW.^[4]

For violation of Section 11, the crime was allegedly committed by Cartina in the following manner:

Criminal Case No. 12-1959:

On the 30th day of October 2012, in the city of Makati, the Philippines,

accused, not being lawfully authorized to possess any dangerous drugs and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in his possession, direct custody, and control zero point zero five (0.05) and zero point zero two (0.02) [gram] of methamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[5]

The Informations^[6] against Jepez and Ramos, Jr. contained substantially the same averments as that charging Cartina with violation of Section 11 of the same law, except for the quantity of methamphetamine hydrochloride allegedly possessed by Jepez which was zero point zero one (0.01) gram, while that of Ramos, Jr. was zero point zero three (0.03) gram.

Appellants, when arraigned on November 14, 2012, entered their respective pleas of not guilty. After the termination of the pre-trial, a joint trial on the merits ensued.

Version of the Prosecution

On October 30, 2012, after confirming the veracity of an information earlier received from a confidential informant (CI) that Cartina was selling *shabu* in Washington Street, Barangay Pio del Pilar, Makati City, Police Senior Inspector Armando L. Yu (PSI Yu) formed an entrapment team to apprehend the suspected drug dealer. The team was composed of PSI Yu as team leader, MADAC operatives Delno A. Encarnacion (MADAC operative Encarnacion), the appointed poseur-buyer, Alfonso R. Juan, Jr. (Juan, Jr.), Police Officer Renie E. Aseboque (PO2 Aseboque), as members and Jojnyfer Cureg (Cureg) as photographer, and others. For the undertaking, MADAC operative Encarnacion was provided with three (3) pieces of P100 bills to be used in the entrapment.

After a short briefing, the team was dispatched to the target area at around 10:00 p.m. of said date. At the place, MADAC operative Encarnacion and the CI saw Cartina and approached the latter while the back-up members were in strategic positions. The CI introduced MADAC operative Encarnacion to Cartina, who at the time was with two male companions, and a deal was made. MADAC operative Encarnacion handed Cartina the three P100.00 bills and, in return, the latter gave him a plastic sachet containing suspected *shabu*. After receiving the plastic sachet, MADAC operative Encarnacion placed a white towel at the back pocket of his pants as a pre-arranged signal to his colleagues. Right then and there, Cartina was placed under arrest and was informed of his constitutional rights. After Cartina was frisked, MADAC operative Encarnacion recovered two other plastic sachets from the left pocket and the P300.00 from the right pocket.

Meanwhile, the two male companions of Cartina who were identified as Jepez and Ramos, Jr., scampered away but were eventually subdued by Juan, Jr. and PO2 Aseboque. When asked to empty their pockets, one piece of small plastic sachet containing white crystalline substance were recovered from each of them. These items seized from Jepez and Ramos, Jr. were turned over to MADAC operative Encarnacion. They then brought appellants, together with the items seized to the *barangay* hall of *Barangay* Pio del Pilar for inventory and marking. Thereat, MADAC operative Encarnacion prepared an inventory receipt and marked the items with his initials "DAE," "DAE-1," "DAE-2," "DAE-3," and "DAE-4," in the presence of

appellants, *Barangay Kagawad* Cesar S. Parrucho (*Kagawad* Farrucho) while Cureg took photographs.

Thereafter, the team returned to their office where a Joint Affidavit of Arrest was prepared. Senior Police Officer 1 Nildo T. Orsua (SPO1 Orsua), the investigator, also prepared the request for Laboratory Examination after the seized items were turned over to him. The Request, together with the seized items and the Chain of Custody Form, were brought by MADAC operative Encarnacion to the Southern Police District (SPD) Crime Laboratory and received by PO3 Elmar B. Manuel. Later upon examination, PSI Anamelisa S. Bacani of the SPD Crime Laboratory, per her Physical Science Report No. D-655-125, confirmed that the plastic sachets recovered from the appellants were positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.

Version of the Defense

The defense' version of the facts, as summarized by the CA, is as follows:

On [October 30,] 2012, while appellants Jepez and Ramos, Jr., were taking a bath near a 'poso' (water pump) located about three (3) meters away from the latter's house, with appellant Cartina about two (2) meters away, six (6) armed persons in civilian attire, whom they later on identified as MAD AC operatives, approached and asked them about the location of one Cedric @ 'Mata.' After responding in the negative, the armed men allegedly mauled them and made them board a van. They were first brought to the MAD AC office where the operatives showed them a plastic sachet containing white crystalline substance and were taken to the barangay hall thereafter where the men summoned a barangay kagawad. Thereat, their photos were taken with the plastic sachet containing white crystalline substance which they denied ownership of. They were thereafter brought to the Scene of the Crime Operatives and to the Pasay General Hospital and were detained afterwards. They denied the charges against them.^[7]

Ruling of the Regional Trial Court

The RTC gave credence to the version of the prosecution. It ruled that all the elements of the crimes charged were duly proved and established. The RTC also held that the integrity and evidentiary value of the items seized from appellants were properly preserved by the buy-bust team under the chain of custody rule. It rejected appellants' defense of denial. By Decision dated February 18, 2015, the RTC convicted appellants. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In Criminal Case No. 12-1958, finding the accused Luisito Cartina y Garcia, GUILTY of the charge for violation of Section 5, Article II of RA 9165 and sentencing him to life imprisonment and to pay a fine of FIVE HUNDRED THOUSAND PESOS (Php500,000.00) without subsidiary imprisonment in case of insolvency; and

2. In Criminal Case Nos. 12-1959 to 1961, finding each of the accused Luisito Cartina y Garcia, Allan Jepez y Tuscano and Nelson Ramos, Jr. y Cartina, GUILTY of the charge for violation of Section 11, Article II of RA 9165 and sentencing each of them to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of FOUR HUNDRED THOUSAND PESOS (400,000.00) without subsidiary imprisonment in case of insolvency.

SO ORDERED.^[8]

Unsatisfied, appellants interposed an appeal with the CA.

Ruling of the Court of Appeals

The CA sustained appellants' conviction holding that the prosecution was able to establish all the essential elements of the crimes for which they were charged. It ruled in favor of the legality of the warrantless arrest and search of appellants. The CA was not convinced that there was failure to comply with Section 21 of RA 9165. It was shown that the law enforcers' chain of custody over the seized items was unbroken leading to the preservation of the integrity and evidentiary value of the illicit drugs. The dispositive portion of the April 28, 2016 Decision of the CA reads:

WHEREFORE, premises considered, the instant Appeal is DENIED and the Decision dated 18 February 2015 of Branch 64, Regional Trial Court of Makati City is hereby AFFIRMED with MODIFICATION, in that the penalty of life imprisonment upon appellant Luisito Cartina y Garcia, is imposed without eligibility for parole.

SO ORDERED.^[9]

Hence, the present appeal.

Pursuant to our Resolution^[10] dated September 28, 2016, the parties manifested that they are just adopting their respective briefs filed with the CA as their Supplemental Briefs.

The Court's Ruling

At the outset, the Court takes note that, in the appellants' brief, there was no substantial discussion on Cartina's warrantless arrest, and the search and seizure of the illegal items, thereby implying his amenability to the findings and conclusions of the courts below that he was caught in *flagrante delicto* during a validly conducted buy-bust operation.

Much has been said in the brief, however, on the warrantless arrest, search and seizure on appellants Jepez and Ramos, Jr. They claim that, at the time of their arrest, they were merely conversing with Cartina and were not committing any overt physical act which would indicate that they were committing a crime. Since there was no valid warrantless arrest, there was likewise no valid warrantless search.

We beg to disagree.