

THIRD DIVISION

[G.R. No. 226053, March 13, 2019]

MARK ANTHONY REYES Y MAQUINA,* PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, A., JR., J.:

This petition for review on *certiorari*^[1] under Rule 45 of the Rules of Court seeks to reverse and set aside the Decision^[2] dated October 22, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 01113-MIN, and the Resolution^[3] dated July 14, 2016, finding petitioner Mark Anthony Reyes y Maquina (Reyes) guilty beyond reasonable doubt of Illegal Sale and Illegal Possession of Dangerous Drugs defined and penalized under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The instant case stemmed from an Information^[4] dated December 9, 2008, accusing Reyes of violation of Section 5, Article II of R.A. No. 9165 or Illegal Sale of methamphetamine hydrochloride, a dangerous drug also known as *shabu*. The accusatory portion of the information reads:

That on November 21, 2008[,] at more or less 1:00 o'clock dawn, near Pocquinto Building, Kauswagan National Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer for sale, and give away to a confidential informant acting as poseur buyer One (1) heat-sealed transparent plastic sachet containing Methamphetamine hydrochloride, locally known as Shabu, a dangerous drug, [with a total weight of 0.45 gram, accused knowing the same to be a dangerous drug,] in consideration of Php 10,000.00.

Contrary to Section 5, Paragraph 1, Article II of Republic Act No. 9165.^[5]

Version of the Prosecution

The facts, as narrated by prosecution witnesses SI2 (formerly IO2) Alex Tablate (SI2 Tablate) and Police Officer 3 Benjamin Jay Reycitez (PO3 Reycitez), are as follows:

On November 20, 2008, at about 5:00 p.m., the Philippine Drug Enforcement Agency's (PDEA) confidential informant reported that a certain Jojo Reyes, later

identified as Reyes, was engaged in the sale of illegal drugs. Upon checking and confirming that Reyes was listed in the agency's watchlist, they immediately informed their Regional Director who instructed them to form an entrapment team composed of: a) SI2 Tablate as team leader; b) PO3 Reycitez as poseur-buyer; c) IO1 Jerard Pica (IO1 Pica); d) IO1 Rebosura; and e) IO1 Dela Cerna.^[6]

The plan was for Reyes and the informant to meet in front of Pocquinto Building, Kauswagan, National Highway between 12 midnight and 1:00 a.m.^[7]

IO1 Pica, IO1 Rebosura and IO1 Dela Cerna went to the agreed meeting place. The confidential informant and PO3 Reycitez alighted from the vehicle and positioned themselves five to seven meters away from the Revo. The whole team waited for almost an hour before Reyes arrived in his motor vehicle. Reyes parked at the side of the road where PO3 Reycitez and the confidential informant were standing. The confidential informant and Reyes talked a while, as PO3 Reycitez stood next to the confidential informant, listening in on the conversation. Reyes then handed the sachet of *shabu* to the confidential informant. At that, PO3 Reycitez made the pre-arranged signal. The rest of the team who were hidden inside the vehicle went out and rushed towards Reyes. Reyes attempted to flee, but was prevailed upon.^[8]

SI2 Tablate read to him his constitutional (Miranda) rights. PO3 Reycitez, on the other hand, turned over the sachet of *shabu* to SI2 Tablate who put the markings "MARM" thereon. Photographs of Reyes and the sachet of *shabu* were likewise taken by the entrapment team.^[9]

SI2 Tablate explained that no buy-bust money was recovered because there was actually no money involved in the transaction, although they had earlier prepared a boodle money for the buy-bust.^[10]

Reyes was taken to the hospital after he suffered a bullet wound on his leg when he tried to escape and the police officer had to employ force to accost him. When his condition became stable, he was brought to the PDEA office for booking and for documentation. Letter-requests for laboratory examination of the sachet of suspected *shabu* and for drug test examination on Reyes were prepared. The seized sachet brought to the Philippine National Police (PNP) Crime Laboratory was found positive for the presence of methamphetamine hydrochloride, otherwise known as *shabu*. The drug test conducted on Reyes, likewise, resulted positive for Methamphetamine Hydrochloride (*shabu*).^[11]

Version of the Defense

Reyes vehemently denied the accusations against him. He denied that there was a buy-bust operation executed by the PDEA on November 21, 2008, but he admitted his presence in Pocquinto Building, Kauswagan National Highway.^[12]

Reyes explained that on the evening of November 20, 2008, he was waiting for his friend, Tomas Celdran, who invited him to a meeting in Pyramid, Kauswagan at around 11:30 p.m. When he parked his motor vehicle, a Toyota Revo vehicle heading towards his direction suddenly halted and several men alighted therefrom pointing their guns at him. He was told not to move. Thinking that the men were

bandits, he ran southward and that was when he was shot on the right foot. He fell on the ground, and the men caught up with him and handcuffed him. The armed men introduced themselves as PDEA agents and arrested him. A woman suddenly appeared from nowhere with a camera, and placed a plastic sachet containing crystalline substance on the seat of his motorcycle. She forced him to point to that sachet and the PDEA agent took photos of him.^[13]

Two other witnesses for the defense, Kevin Pabilona (Pabilona) and Jorge Michael Calugay (Calugay), testified that at around 10:00 p.m., they were having a drinking session at a boarding house located at Pocquinto Building in Kauswagan. At around 1:00 a.m. of November 21, 2008, as Pabilona was about to go home, Calugay accompanied him in hailing a taxi cab. Both saw a speeding Toyota Revo and an Isuzu Crosswind. They claimed that both vehicles stopped beside the man on the motor vehicle and men started to alight from them, pointing guns at the man, later identified as Reyes. The two witnesses panicked and ran back to the boarding house, where they played computer games. Then they heard gunshots. When they noticed neighbors coming out of their respective houses, they themselves went out to check the commotion. It was then when they came to know that the armed men were PDEA agents and that the man shot was Reyes.^[14]

On June 14, 2013, the Regional Trial Court (RTC) of Cagayan de Oro City, Branch 25, convicted Reyes for Illegal Possession of dangerous drugs, defined and penalized under Section 11, Article II of R.A. No. 9165. According to the RTC, the prosecution was able to establish the guilt of Reyes beyond reasonable doubt, but not for the crime charged (Illegal Sale); rather, for the lesser offense of Illegal Possession, an offense which is necessarily included in the offense charged. The dispositive portion of the RTC Decision^[15] reads:

WHEREFORE, premises considered, this Court finds the accused MARK ANTHONY REYES y MAQUINA GUILTY BEYOND REASONABLE DOUBT of the crime defined and penalized under Section 11 of R.A. 9165 and hereby sentences him to suffer the penalty of imprisonment ranging from Twelve (12) years and one (1) day to Fourteen (14) years, and to pay a Fine in the amount of P300,000.00 without subsidiary imprisonment in case of non-payment of Fine.^[16]

On appeal, the CA modified the decision of the lower court and adjudged Reyes guilty of Illegal Sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165. The dispositive portion of the CA Decision^[17] dated October 22, 2015 reads:

FOR THESE REASONS, the assailed Judgment is AFFIRMED with MODIFICATION. We find Mark Anthony Reyes y Maquina GUILTY beyond reasonable doubt of violating Section 5, Article II of [R.A.] No. 9165. He is sentenced to suffer the penalty of life imprisonment and a fine of P500,000.00.

SO ORDERED.^[18]

Reyes moved for reconsideration which was, however, denied by the CA in a Resolution^[19] dated July 14, 2016; hence, the instant petition.

The pivotal issue for this Court's resolution is whether or not Reyes' conviction for Illegal Sale of dangerous drugs, defined and penalized under Section 5, Article II of R.A. No. 9165, should be upheld.

Ruling of the Court

The petition is impressed with merit.

In cases involving dangerous drugs, the prosecution must prove with moral certainty the identity of the prohibited drug considering that the dangerous drug itself forms part of the *corpus delicti* of the crime. The prosecution has to show an unbroken chain of custody over the dangerous drugs so as to obviate any unnecessary doubts on the identity of the dangerous drugs on account of switching, "planting," or contamination of evidence. Accordingly, the prosecution must be able to account for each link in the chain of custody from the moment that the illegal drugs are seized up to their presentation in court as evidence of the crime.^[20]

Records bear that initially, the issue raised by the parties, and discussed by the RTC and the CA, circled on whether or not Reyes could be held liable for Illegal Sale (and not merely illegal possession) of dangerous drugs notwithstanding the absence of marked money signifying consummation of the sale transaction.

The RTC ratiocinated that since the last element or requisite for a valid buy-bust operation, *i.e.*, *consideration/payment of marked money*, is lacking, Reyes could not be held liable for illegal sale but only for illegal possession, an offense that is necessarily included in the former. The CA, on the other hand, ruled that the act of delivering dangerous drugs (*shabu*) undoubtedly falls within the ambit of Section 5, Article II of R.A. No. 9165. The pertinent, portions of the CA decision read:

As earlier noted, Reyes delivered a sachet of shabu to the confidential informant and PO3 Reycitez, the poseur buyer. And so, at the time of his arrest, Reyes had just committed a crime, particularly that which falls under Section 5 of RA 9165 - or the delivery of shabu to another person. Section 5 reads:

Section 5. *Sale, Trading, Administration, Dispensation, **Delivery**, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (P500,000.00) to Ten Million pesos (P10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, **deliver**, give away to another, distribute[,], dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

x x x

Notably, Reyes was not indicted solely for illegal sale of shabu. He was prosecuted, too, because he allegedly violated Section 5 of RA 9165. x x

x.

x x x x

This being the case, the two requisites for a valid *in flagrante delicto* arrest were attendant when Reyes was arrested. He executed an overt act of delivering a sachet of shabu worth Php 10,000.00 to the confidential informant. This overt act was done in the presence of PO3 Reycitez who acted as poseur buyer and was standing next to the confidential informant when Reyes committed the offense.^[21] (Emphases Ours)

Although the Court agrees with the CA that Reyes may be held liable under Section 5, Article II of R.A. No. 9165 for the delivery of *shabu* even without consideration, We cannot turn a blind eye to the glaring procedural lapses in the evidence proffered by the prosecution.

The Rule on Chain of Custody was not observed

In the case of *People v. Alivio, et al.*,^[22] it was explained that the chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court. Section I(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, defined the chain of custody rule in the following manner:

b. **"Chain of Custody"** means the **duly recorded authorized movements** and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, **from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.** Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody [was] made in the course of safekeeping and use in court as evidence, and the final disposition[.]

Section 21, Article II of R.A. No. 9165 laid down the procedure that must be observed and followed by police officers in the seizure and custody of dangerous drugs. Paragraph (1) not only provides the manner by which the seized drugs must be handled, but likewise enumerates the persons who are required to be present during the inventory and taking of photographs, viz.:

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