

FIRST DIVISION

[G.R. No. 227867, June 26, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
VICTOR DE LEON, ACCUSED-APPELLANT.**

DECISION

DEL CASTILLO, J.:

Before the Court is an appeal from the May 24, 2016 Decision^[1] of the Court of Appeals (CA) in CA-GR. CR-HC No. 06923, which affirmed *in toto* the November 3, 2013 Decision^[2] of the Regional Trial Court (RTC) of Santiago City, Branch 35, in Criminal Case No. 35-5828, finding accused-appellant Victor De Leon (appellant) guilty of illegal sale of Methamphetamine Hydrochloride or *shabu*, in violation of Section 5, Article II of Republic Act No. (RA) 9165.^[3]

Factual Antecedents

The Information against appellant contained these accusatory allegations:

That on or about the 10th day of April, 2007 at Mabini, Santiago City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused in consideration of two (2) [F]ive Hundred (P500.00) Philippine Currency marked bills with Serial Number CY815170 and Serial Number FU444638, did then and there willfully, unlawfully and feloniously sell and deliver to IO1 LIRIO T. ILAO, Poseur-buyer, 0.03 [gram] of Methamphetamine Hydrochloride, more or less, locally known as *shabu*[,] without any authority or license to do the same.

CONTRARY TO LAW.^[4]

Records reveal that appellant escaped immediately after the buy-bust operation^[5] such that a warrant for his arrest^[6] was issued. He was eventually arrested and detained at the Isabela Provincial Jail in Alibagu, Ilagan, Isabela, but for another crime (murder).^[7]

Thereafter, on arraignment, appellant pleaded "Not Guilty"^[8] to the charge of illegal sale of dangerous drugs against him.

Version of the Prosecution

At about 9:00 a.m. on April 10, 2007, Senior Police Officer 2 Domingo Balido (SPO2 Balido), the Team Leader of PDEA^[9] Regional Office (RO) 2, received a call from an informant telling him that she (informant) had set a deal to purchase some *shabu* from appellant.^[10] Appellant had been under police surveillance as he was listed

under the PDEA drug watch list.^[11]

Acting on the information, SPO2 Balido immediately organized a buy-bust team and designated Intelligence Officer 1 Lirio T. Ilao^[12] (IO1 Ilao) as poseur-buyer.^[13] He gave IO1 Ilao two P500.00 bills as marked money for the purchase of two sachets of *shabu* from appellant.^[14] IO1 Seymoure Darius Sanchez (IO1 Sanchez) and Dexter Asayco^[15] (IO1 Asayco) were designated as back-up or arresting officers.^[16] The team also agreed that IO1 Ilao would "miscal" the cellphone of IO1 Asayco once the transaction was completed.^[17]

At about 1:00 p.m. of the same day, the buy-bust team met with the informant.^[18] IO1 Ilao and the informant proceeded to appellant's residence at P-3 Looban, Mabini, Santiago City, while the rest of the buy-bust team followed them at a distance of approximately 50 meters.^[19]

IO1 Ilao and the informant then knocked at the house of appellant. Upon opening the same, appellant immediately asked them how much *shabu* they were going to buy. IO1 Ilao answered, "worth P1,000.00", and handed to him the marked money. In turn, appellant gave IO1 Ilao one plastic sachet containing white crystalline substance and asked her and the informant to wait as he would repack another sachet of *shabu* in his room. While waiting, IO1 Ilao "miscalled" IO1 Asayco. When the team barged into the house, a commotion transpired. The PDEA operatives tried to look for appellant at the room where he was supposedly repacking the *shabu* but they could not find him.^[20] Meanwhile, the buy-bust team saw two men^[21] using *shabu* inside appellant's house and arrested them.^[22]

Afterwards, the buy-bust team proceeded to their office in Tuguegarao City. According to IO1 Ilao, while on their way to their office, she kept custody of the item she bought from appellant.^[23] Upon the other hand, IO1 Asayco and IO1 Sanchez testified that their investigator, SP01 Danilo Natividad (SPO1 Natividad), was in possession of the other seized items since these items were recovered at appellant's house, including the one that appellant sold to IO1 Ilao.^[24]

When the buy-bust team arrived at the PDEA office, IO1 Ilao handed to IO1 Sanchez the sachet of suspected *shabu* that she bought from appellant. IO1 Ilao, IO1 Sanchez and IO1 Asayco thereafter marked it with their respective initials "LTI," "SDS," and "DGA."^[25] After the marking, IO1 Ilao prepared a "Receipt of Property Seized" with IO1 Sanchez and IO1 Asayco attesting that they witnessed the inventory of the listed items therein. There was no indication, however, that any representative of the appellant witnessed the inventory of the seized items (considering that appellant escaped arrest). Neither did any elective public official, representatives from the Department of Justice (DOJ) and the media sign the inventory.^[26] Likewise, no photograph of the recovered items was attached to the records of the case.

When she testified in court, IO1 Ilao affirmed that the specimen adduced in evidence was the very subject of the buy-bust operation, and that it was this subject specimen that she and the other members of the PDEA marked at their office.^[27]

During the trial, the testimony of Police Senior Inspector Roda Agcaoili (PSI Agcaoili) was dispensed with, as the defense had already admitted the following matters: PSI Agcaoili was an expert witness, she being a forensic chemist at the PNP^[28] Crime Laboratory; the PDEA had submitted to the Crime Laboratory a Request for the laboratory examination of the specimen subject of the case; per her examination, the specimen gave a positive result for methamphetamine hydrochloride, a dangerous drug; and, she could identify in court the subject specimen as well as her report covering its examination.^[29]

Version of the Defense

Appellant denied the charge against him. The CA summarized appellant's denial in this manner:

[Appellant] denied the allegations against him. He was allegedly in the public market of Santiago City at around 1:30 in the afternoon of April 10, 2007. When he returned home, his mother and neighbor informed him that PDEA agents forcibly entered his house. After 10 days, he received a subpoena from the Office of the City Prosecutor (OCP) of Santiago City informing him of a criminal case against him.

[Appellant] testified that he does not know any reason why the PDEA agents filed the case against him and he did not prosecute the PDEA agents for falsely testifying against him.^[30]

Ruling of the Regional Trial Court

On November 3, 2013, the RTC rendered its Decision finding appellant guilty as charged. It sentenced him to suffer the penalty of life imprisonment and ordered him to pay a fine of P500,000.00.^[31]

According to the RTC, in a buy-bust operation, all that is necessary for conviction for illegal sale of prohibited drug is the accused's (a) receipt of the buy- bust money as payment for the drug and (b) delivery of the illegal drug to the poseur-buyer who paid for it. The RTC held that these twin facts were proven in this case. It further stressed that the escape of appellant during the buy-bust was of no consequence because the actual sale of the illegal drug took place prior to his escape.^[32]

The RTC also denied^[33] appellant's motion for reconsideration.

Ruling of the Court of Appeals

In its Decision of May 24, 2016, the CA affirmed the RTC.

The CA held that the elements of illegal sale of dangerous drug were satisfactorily established considering that (1) IO1 Ilao purchased from appellant P1,000.00 worth of *shabu*; (2) appellant gave IO1 Ilao one sachet of *shabu* and was in the process of repacking another when the rest of the buy-bust team entered into his home and he, in turn, escaped the premises. The CA also ruled that the one sachet of *shabu* given to IO1 Ilao, which was presented in court, proved that appellant committed illegal sale of dangerous drug.^[34] The CA added that the chain of custody rule was

complied with in this case.^[35]

Undaunted, appellant filed this appeal raising the same arguments he presented before the CA. Essentially, he contends that the prosecution failed to prove beyond reasonable doubt that he committed illegal sale of dangerous drug as there was non-observance of the chain of custody rule under Section 21, Article II of RA 9165.^[36]

Our Ruling

The appeal is impressed with merit.

In an indictment for the illegal sale of *shabu*, it is absolutely necessary for the prosecution to establish with moral certainty the elements thereof, as well as the *corpus delicti* or the seized illegal drug. In addition, the chain of custody requirement must be complied with, leaving no lingering doubt that its identity and evidentiary weight had indeed been preserved.^[37]

"Chain of custody[, or] the recorded authorized movements and custody of seized drugs x x x from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping, to presentation in court for destruction,"^[38] is both crucial and critical in convicting an accused for any violation of RA 9165. This much is clear particularly from Section 21 thereof which provides for the procedure governing the custody of seized drug and related items, to wit:

Section 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 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;
- (2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

The Court has repeatedly stressed that it is the prosecution's onus to prove every link in the chain of custody - from the time the drug is seized from the accused, until the time it is presented in court as evidence; and where the prosecution fails to strictly comply with the procedure under Section 21, Article II of RA 9165, it must give justifiable ground for its non-compliance.^[39]

Generally there are four links in the chain of custody of the seized illegal drug: (i) its seizure and marking, if practicable, from the accused, by the apprehending officer; (ii) its turnover by the apprehending officer to the investigating officer; (iii) its turnover by the investigating officer to the forensic chemist for examination; and, (iv) its turnover by the forensic chemist to the court.^[40]

In the present case, the prosecution miserably failed to comply with the chain of custody rule and to proffer any justifiable ground for such non-compliance.

First, there were varying claims as to who actually took custody of the seized illegal drug after the buy-bust operation.

On one hand, IO1 Ilao testified that she kept custody of the recovered drug at the conclusion of the buy-bust operation up to the time she handed it over to the evidence custodian, IO1 Sanchez, at their office, *viz.*:

Q. Now after conducting the buy-bust operation in the house of [appellant] and when his arrest became futile in view of his [escape], where did you proceed next?

A. We proceeded] to the Regional Office in Tuguegarao Cagayan.

x x x x

Q. From the place where you conducted the buy-bust operation at Mabini in the house of [appellant] to the Regional Office in Tuguegarao City[,] who ha[d] custody of the specime[n] that you purchased from [appellant]?

A. I, ma'am.

Q. So it never left you[r] possession?

A. Yes, ma'am.^[41]