

SECOND DIVISION

[G.R. No. 212170, June 19, 2019]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. ALEX
ESCARAN Y TARIMAN, ACCUSED-APPELLANT.**

DECISION

CAGUIOA, J:

Before the Court is an ordinary appeal^[1] filed by accused-appellant Alex Escaran y Tariman (Escaran) assailing the Decision^[2] dated August 30, 2013 of the Court of Appeals, Twentieth Division, Cebu City (CA), in CA-G.R. CEB CR-HC No. 01275, which affirmed with modification the Joint Judgment^[3] dated October 18, 2010 of the Regional Trial Court (RTC), Branch 28, 7th Judicial Region, Mandaue City in Criminal Case Nos. DU-11130 and DU-11131, finding Escaran guilty beyond reasonable doubt of the crimes punished under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,^[4] otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

In two separate Informations⁵ both dated March 23, 2004, Escaran was charged with illegal sale and illegal possession of dangerous drugs defined and punished under Sections 5 and 11, respectively, Article II of RA 9165. The accusatory portions of the Informations read as follows:

Criminal Case No. DU-11130 (For violation of Section 5):

That on or about the 21st day of March, 2004 in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent and without being authorized by law, did then and there wilfully, unlawfully and feloniously sell, deliver and give away to another two (2) packets containing "shabu" or methylamphetamine hydrochloride having a total weight of 0.06 gram, a dangerous drug.

CONTRARY TO LAW.^[6]

Criminal Case No. DU-11131 (For violation of Section 11):

That on or about the 21st day of March, 2004, in the City of Mandaue, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there wilfully, unlawfully and feloniously have in his possession, custody and

control four (4) heat-sealed transparent plastic packet[s] of white crystalline substance having a combined weight of 0.08 gram which when subjected to laboratory examination gave positive results for the presence of methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.^[7]

When arraigned, Escaran pleaded not guilty to both charges against him.^[8] During the pre-trial, the court dispensed with the testimony of Police Senior Inspector, Forensic Chemical Officer Mutchit G. Salinas (PSI Salinas) after the parties stipulated on the following:

1. The complaining policemen are all members of the Mandaue Police Office, assigned to the DEU;
2. Escaran was arrested on March 21, 2004 at about 9:20 in the evening at Ibabao, Mandaue City;
3. The existence of Chemistry Reports D-523-2004 and D-552-2004 as well as the expertise of PSI Salinas;
4. The Pre-Operation Report refers to March 21, 2004, 2000H-2200H, or from 8:00 to 10:00 in the evening.^[9]

Thereafter, trial ensued. The prosecution presented PO1 Roque Veraño , Jr. (PO1 Veraño) and PO1 Bimon Montebon (PO1 Montebon) whose testimonies were summarized by the CA as follows:

On March 21, 2004[,] at around 7:00 o'clock in the evening the confidential agent of the Drug Enforcement Unit of Mandaue made a phone call to Police Chief [Inspector Juanito] Enguerra [PCI Enguerra,] informing the latter that [Escaran] is selling shabu at Sitio Sapa-Sapa, Ibabao, Mandaue City. Their conversation lasted for an hour and a half. On the basis of the said information, PCI Enguerra directed PO1 Montebon and PO1 Veraño together with their informant to conduct a surveillance at Sitio Sapa-Sapa at around 8:00 o'clock in the evening, wherein the said policemen ascertained that the information they received was accurate.

Upon their return at the police station, PCI Enguerra conducted a briefing attended by the confidential agent, PO1 Montebon, PO1 Veraño and SPO4 Tumakay wherein the group hatched a plan to conduct a buy bust operation against [Escaran]. PO1 Veraño was designated as the poseur-buyer and he was given x x x pre-marked two x x x P100.00 peso bills furnished by SPO1 Enri[q]uez who affixed his signature on the upper left portion of the said bills.

After their briefing, at around 9:00 o'clock in the evening, on board the service vehicle, Mobile 9, PO1 Montebon, PO1 Veraño and SPO1 Enriquez together with the confidential agent went to the designated area. Twenty minutes after the group arrived, they were met by [Escaran,] who asked PO1 Veraño if he would be interested to buy shabu to which the latter

answered in the affirmative. PO1 Veraño then told [Escaran] that he would buy worth P200.00[;] thereafter the latter handed to the former two [2] packs of shabu.

After that, PO1 Veraño and PO1 Montebon introduced themselves as policemen and [arrested Escaran] who was thereafter appraised of his constitutional rights. When [Escaran] was frisked by PO1 Montebon, the policeman was able to recover an additional four [4] packs of shabu from the right front pocket of [Escaran]'s trousers.

The police officers then brought [Escaran] to the police station. The two [2] packets from the sale were then marked as "Alex-1" and "Alex-2" while the four [4] packets obtained from the search were marked as "AET- 1" to "AET-4". The contraband were then brought to the PNP Crime Laboratory for examination.

The Chemistry Report [p]repared by [PSI Salinas] on the items seized from [Escaran] yielded positive results for shabu.^[10]

For his defense, Escaran denied the charges and narrated that:

x x x At around 5:00 o'clock in the afternoon of March 21, 2004, [Escaran] was told by his co-worker Arman to wait for him by the bamboo groove near his house so that they could go together to work. They were supposed to report at 9:30 o'clock (sic) in the evening at the back portion of Sitio Sapa-Sapa. [Escaran] had been under the employ of one Titing as a butcher of chickens for the past four [4] years prior to his arrest. Two minutes into waiting for Arman, the latter arrived and told [Escaran] to wait further as he was going to sharpen his knife and if their other companions would arrive before him [Arman] then [Escaran] should go with them.

[Escaran] decided to wait further as their other companions were not yet in sight. A while later he noticed four [4] persons who approached him and asked where they could buy shabu. [Escaran] replied that he does not sell shabu and directed the persons to go further back out and he saw the group heading towards the store. Thereafter, one of the persons in the group came back to him and asked him to accompany them because they were not familiar with the place. [Escaran] declined and said that he was waiting for his companions. The person left him alone. Still, no companions in sight, another person from the group was able to come back and asked him again to accompany them but then again he declined. This infuriated the person who retorted "Why will you not accompany us? We are just requesting you to accompany us."

Undaunted, another one from the group whom he identified as Montebon introduced himself saying "Bay, we are policemen. You just accompany us where we can buy shabu." But [Escaran] was adamant saying he could not do that because he was waiting for his companions. Montebon then replied[,] "It's up to you, you might regret it", after he said that he returned to his companions.

The four of them, then approached him and ordered him to stand up. [Escaran] asked why he was ordered around but they retorted that he was hard-headed. Suddenly, one of the four people drew his gun and aimed at [Escaran] saying[,] "If you only had accompanied us, this [would] not have happened to you.["] Thereafter, he was dragged in a corner and was told to board the vehicle. He was later on brought to the Command Office where he was asked to point to them [policemen] the house of a certain Dennis and was even told that should he supply them the information, the four will set him free. Not knowing any person in the name of Dennis, he could not give them an answer.

They left him for a while in a small room and a few short minutes later, they brought him outside and made him sit on a table near the computer and was told: "do you see those packs? Those 6 packs will be yours if you will not tell us." He pleaded to them and told them that he was still on probation but they were just laughing at him. He was later on locked up and brought to Precinct I.^[11]

Ruling of the RTC

The RTC found Escaran guilty beyond reasonable doubt of violation of Sections 5 and 11 of RA 9165 and sentenced him to life imprisonment and an indeterminate penalty of twelve (12) years as minimum term to twelve (12) years and one (1) day as maximum term, respectively.^[12] The RTC found that all the elements of illegal sale and illegal possession of dangerous drugs were established by the prosecution and that there was regularity in the performance of official duties by the members of the buy-bust team.^[13] The RTC further held that Escaran's defense of denial is not sufficient to overcome the positive assertion of the police officers that Escaran was caught selling *shabu*.^[14]

Ruling of the CA

On appeal, the CA, in the assailed Decision,^[15] sustained Escaran's conviction. The CA agreed with the RTC that all the elements of the crimes charged were established by the straightforward and categorical declaration of the prosecution's witnesses, especially since the defense did not adduce any evidence showing that the police officers in the buy-bust operation had any ill motive to make false charges against Escaran.^[16]

The CA further held that the failure of the police officers to strictly comply with the provisions of Section 21 of RA 9165 is of no moment since the integrity and evidentiary value of the drugs seized from Escaran were preserved.^[17]

The CA, however, modified the penalties imposed upon Escaran that in Criminal Case No. DU-11130, Escaran was further ordered to pay P500,000.00 as fine; while in Criminal Case No. DU-11131, Escaran was sentenced to an indeterminate penalty of twelve (12) years and one (1) day to twenty (20) years with all the accessory penalties provided by law and ordered to pay P300,000.00 as fine.^[18]

Hence, the instant appeal.

Issue

Whether the CA erred in sustaining Escaran's conviction for violation of Sections 5 and 11, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. Escaran is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense^[19] and the fact of its existence is vital to sustain a judgment of conviction.^[20] It is essential, therefore, that the identity and integrity of the seized drug be established with moral certainty.^[21] Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.^[22]

In this regard, Section 21,^[23] Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers should strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation;** and (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ),** all of whom shall be required to sign the copies of the inventory and be given a copy of the same and the seized drugs must be turned over to the Philippine National Police (PNP) Crime Laboratory within twenty-four (24) hours from confiscation for examination.^[24]

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.^[25]

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;^[26] and, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the