

## **SECOND DIVISION**

**[ G.R. No. 231007, July 01, 2019 ]**

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
ANTONIO MARTIN Y ISON, ACCUSED-APPELLANT.**

### **DECISION**

**LAZARO-JAVIER, J.:**

#### **The Case**

This appeal seeks to reverse the Decision dated September 23, 2016<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 06912, affirming the conviction of appellant Antonio Martin y Ison for violation of Section 5, Article II of Republic Act 9165 (RA 9165)<sup>[2]</sup> and imposing on him life imprisonment and P500,000.00 fine.

#### **The Proceedings Before the Trial Court**

Appellant Antonio I. Martin was charged with violation of Section 5, Article II, RA 9165 under the following Information:

That on or about the 17<sup>th</sup> day of February 2010 in the Municipality/City of San Leonardo, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously have in his control and custody one (1) piec(e) of plastic sachet of Methamphetamine Hydrochloride ("shabu"), and sell the same to a civilian asset, without the necessary permit and/or license having been issued to him by the proper government agency, to the damage and prejudice of the Government.

CONTRARY TO LAW.<sup>[3]</sup>

On arraignment, appellant pleaded not guilty.<sup>[4]</sup> Trial ensued.

Members of the Philippine National Police (PNP), namely: PO3 Alfredo Gavino, PO2 Jherome Songalia, and Forensic Chemist Jebie C. Timario testified for the prosecution. On the other hand, appellant and Emilio Portugal testified for the defense.

#### **The Prosecution's Version**

On February 17, 2010, around 4:30 o'clock in the afternoon, PO3 Alfredo Gavino received a report from a confidential informant that appellant was involved in the illegal sale of dangerous drugs and that he (confidential informant) could buy these drugs from appellant later in the day. PO3 Gavino relayed this information to his superior Police Chief Inspector (PCI) Francisco Mateo II. PCI Mateo then directed PO3 Gavino to verify the information and launch a buy bust operation. PCI Mateo handed two (2) pieces of P100.00 bill to PO1 Jonathan Manuel for ultraviolet dusting.<sup>[5]</sup>

Around 6 o'clock in the evening, PO1 Manuel handed to PO3 Gavino the two pieces P100.00 bill dusted with ultraviolet powder. PCI Mateo called his men to firm up the buy bust operation on appellant. The confidential informant was tasked as poseur buyer, and PO3 Gavino and PO2 Jherome Songalia as arresting officers.<sup>[6]</sup> PO3 Gavino gave the P100.00 bills to the confidential informant.<sup>[7]</sup>

Thirty (30) minutes later, PO3 Gavino and PO2 Songalia proceeded to Lacson Colleges, Barangay Castellano, San Leonardo, Nueva Ecija. The confidential informant who arrived there earlier was already talking with appellant. PO3 Gavino and PO2 Songalia positioned themselves about eight (8) meters away. Although they could not hear the conversation between the confidential informant and appellant, they could clearly see what was happening. After a while, they saw the confidential informant scratch his head indicating that the sale was already consummated.<sup>[8]</sup> PO3 Gavino and PO2 Songalia immediately closed in.

PO3 Gavino frisked appellant and recovered from the latter the buy bust money. He also recovered from the confidential informant a small plastic sachet containing white crystalline substance. Thereafter, PO3 Gavino arrested appellant, informed him of his constitutional rights, and brought him to the police station.<sup>[9]</sup>

At the police station, PO3 Gavino turned over appellant and the seized items to the investigation officer PO3 Freddie Sevilla. In appellant's presence, they marked the plastic sachet with "ANG-1," representing PO3 Gavino's initials. They also conducted a physical inventory of the seized items in the presence of appellant, media representatives Cris Yambot and Melvin Yambot, Barangay Councilor Venancio M. Castillo, and the Acting Clerk of Court of the Municipal Trial Court of San Leonardo. Cris Yambot took photos of appellant together with the other witnesses.<sup>[10]</sup>

Thereafter, the investigating officer prepared a request for laboratory examination of the contents of the plastic sachet and another request for appellant's drug test and ultraviolet fluorescent powder test. PO3 Gavino took appellant and the plastic sachet to the crime laboratory. It was Forensic Chemist Jebie Timario who personally received the plastic sachet and appellant's urine sample.<sup>[11]</sup>

Per Chemistry Report No. D-019-2010 (NEPCLO), Forensic Chemist Timario found the contents of the plastic sachet positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.<sup>[12]</sup>

The prosecution offered the following exhibits: Exhibits "A" to "B" – two pieces of

P100.00 bills with serial numbers NF004283 and VX564757, respectively;<sup>[13]</sup> Exhibits "D" to "D-2" – Request for Laboratory Examination on Seized Evidence;<sup>[14]</sup> Exhibits "F" to "F-1" - Request for Ultraviolet Powder Examination;<sup>[15]</sup> Exhibits "G" to "G-3" – Chemistry Report No. D-019-2010 (NEPCLO);<sup>[16]</sup> Exhibits "H" to "H-3" – Chemistry Report No. PI-010-2010 (NEPCLO) [ultraviolet powder];<sup>[17]</sup> Exhibits "I" to "I-5" – Receipt of Property Seized;<sup>[18]</sup> Exhibits "J" to "J-2" – one heat sealed transparent plastic sachet marked "ANG-1A" containing 0.01 gram of methamphetamine hydrochloride "*shabu*").

### **The Defense's Version**

Appellant testified that on February 17, 2010, he was urinating outside his residence fronting Lacson Colleges at Barangay Castellano, San Leonardo, Nueva Ecija. When he turned his head, he saw a man looking at him. He later learned that the man was Manuel Pangilinan. When he asked Pangilinan what he could do for him, the latter replied by also asking him if he was "Juanito." He said he was "Tony." Pangilinan then opened his palm and showed him a plastic containing ububog." Pangilinan asked him to admit that he bought it from a certain "Paolo." Pangilinan also asked for the current location of "Paolo." He replied: "dala po ninyo yan, sir." To this, Pangilinan snapped at him: "ayaw eh di tutuluyan ka naming then, Pangilinan handcuffed him.<sup>[19]</sup>

Pangilinan dragged him toward PO3 Gavino. Together, the two boarded him into an owner type jeep to bring him to the police station. While in transit, Pangilinan told him they would set him free so long as he tells them where "Paolo" was. When he declined, Pangilinan elbowed him and threatened, "*tutuluyan ka na namin.*"<sup>[20]</sup>

At the police station, Pangilinan and PO3 Gavino frisked him. They took his wallet containing P710.00 and a photocopy of his tricycle's official registration. After detaining him inside the cell, Pangilinan and PO3 Gavino left. When they came back, they already had Paolo Ramos whom they also detained.<sup>[21]</sup>

Emilio Portugal confirmed that a police officer went to their area looking for Juanito. He later learned that it was appellant who got arrested.<sup>[22]</sup>

The defense did not offer any documentary evidence.

### **The Trial Court's Ruling**

By Decision dated March 11, 2014,<sup>[23]</sup> the trial court found appellant guilty as charged, viz:

WHEREFORE, premises considered, the court finds the accused Antonio Martin y Ison GUILTY BEYOND REASONABLE DOUBT of the Crime of violation of Section 5, Article II of the Republic Act No. 9165 and imposes upon him the penalty of life imprisonment and to pay a fine of P500,000.00.

SO ORDERED.<sup>[24]</sup>

Through Order dated April 24, 2014,<sup>[25]</sup> the trial court denied appellant's motion for reconsideration.

### **The Proceedings Before the Court of Appeals**

#### *Appellant's Argument*

On appeal, appellant faulted<sup>[26]</sup> the trial court for rendering a verdict of conviction against him. He argued that PO3 Gavino and PO2 Songalia both failed to categorically show that a sale of illegal drugs actually took place between appellant and the confidential informant. They, in fact, only testified that they could not hear the conversation between them.

Too, the testimonies of the prosecution witnesses were replete with inconsistencies, *i.e.*: (1) PO2 Songalia initially testified that he was the one who acted as poseur buyer, contrary to PO3 Gavino's testimony that it was the confidential informant who acted as poseur buyer; (2) PO3 Gavino testified that he was the one who brought the seized items to the crime laboratory while PO2 Songalia testified that it was PO1 Bruno; (4) PO3 Gavino testified the plastic sachet was marked with "ANG-1," but Forensic Chemist Timario testified the sachet she examined was marked "ANG-1 A"; (5) PO3 Gavino initially testified he marked the sachet but later said that it was PO3 Sevilla who did.

The arresting officers failed to comply with the chain of custody rule. For one, the prosecution failed to present the confidential informant who acted as poseur buyer, PO3 Sevilla, and the evidence custodian from the crime laboratory. For another, the seized items were not marked immediately after seizure. Non-compliance with the procedures under the Implementing Rules and Regulations (IRR) of RA 9165 may be excused only when there are justifiable grounds and when the identity and integrity of the alleged drug were preserved, which was not the case here.

#### *The People's Arguments*

The Office of the Solicitor General (OSG) through Senior State Solicitor Ma. Zorayda V. Tejones-Zuñiga and Associate Solicitor Princess Jazmine C. Logroño, countered in the main: (a) the prosecution had sufficiently established all the elements of illegal sale of dangerous drug; (b) the police officers' failure to hear the conversation between the seller and the poseur buyer is not fatal to the cause of the prosecution considering that PO2 Songalia testified that he saw appellant hand the sachet to the confidential informant. The important aspect of the *modus operandi* is not hearing, but seeing the appellant sell dangerous drugs to the poseur buyer; (c) minor inconsistencies in the testimonies of the prosecution witnesses do not impair their credibility; (d) the witnesses had shown the unbroken chain of custody of the seized item from the time it was sold to the confidential informant up to the time it was presented in court; (e) non-presentation of the poseur buyer is not fatal; and (f)

substantial compliance with the procedure under Section 21, IRR of RA 9165 is sufficient so long as the integrity and evidentiary value of the seized item were preserved.<sup>[27]</sup>

### **The Court of Appeals' Ruling**

By its assailed Decision dated September 23, 2016,<sup>[28]</sup> the Court of Appeals affirmed in this wise:

**WHEREFORE**, premises considered, the instant Appeal is **DENIED**. Accordingly, the Decision of the Regional Trial Court, Third Judicial Region, Branch 34, Gapan City, Nueva Ecija, in Criminal Case No. 14180-10, dated 11 March 2014 is hereby **AFFIRMED**.

**SO ORDERED.**<sup>[29]</sup>

### **The Present Petition**

Appellant now seeks affirmative relief from the Court and pleads anew for his acquittal.

For the purpose of this appeal, both appellant and the People manifested that, in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.<sup>[30]</sup>

### **Issue**

Did the Court of Appeals err when it affirmed appellant's conviction for violation of Section 5, Article II, RA 9165 (illegal sale of dangerous drugs)?

### **Ruling**

In illegal drugs cases, the drug itself constitutes the *corpus delicti* of the offense. The prosecution is, therefore, tasked to establish that the substance illegally possessed by the accused is the same substance presented in court.<sup>[31]</sup>

To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody enumerates the **links** in the chain of custody that must be shown for the successful prosecution of illegal sale of dangerous drugs, i.e. **first**, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; **second**, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; **third**, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and **fourth**, the turnover and submission of the marked illegal drug