

# FIRST DIVISION

[ G.R. No. 233200, September 09, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.  
CARMELO CARPIO Y TARROZA, ACCUSED-APPELLANT.**

## DECISION

**BERSAMIN, C.J.:**

The requirements for the preservation of the chain of custody in drug-related prosecutions are to be dispensed with upon justifiable reasons, and only if the integrity and evidentiary value of the confiscated dangerous drugs are properly preserved by the apprehending officers.

### The Case

By this appeal, the accused-appellant seeks the review and reversal of the decision promulgated on April 7, 2017,<sup>[1]</sup> whereby the Court of Appeals (CA) affirmed the judgment rendered on May 28, 2014 by the Regional Trial Court (RTC), Branch 13, in Zamboanga City finding him guilty of the crimes of illegal sale and illegal possession of *shabu*, a dangerous drug, as respectively defined and punished by Section 5 and Section 11 of Republic Act No. 9165 (*Comprehensive Drugs Act of 2002*).<sup>[2]</sup>

### Antecedents

The accusatory portions of the informations filed against the accused-appellant read as follows:

For violation of Section 5, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not authorized by law to sell, deliver, give away to another, transport or distribute any dangerous drug, did then and there willfully, unlawfully and feloniously, SELL and DELIVER to SPO1 SERGIO M. RIVERA, a bona fide member of the PNP assigned with the ZCPO Anti-Illegal Drug Special Operation Task Force, who acted as a poseur-buyer, one (1) medium heat-sealed transparent plastic pack containing 0.0568 gram of white crystalline substance which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (*shabu*), knowing the same to be a dangerous drug.

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

For violation of Section 11, R.A. No. 9165

That on or about August 20, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused not being authorized by law, did then and there willfully, unlawfully and feloniously, have in his possession and under his custody and control, two (2) small heat-sealed transparent plastic packs each containing white crystalline substance having a total weight of 0.0317 gram both of which when subjected to qualitative examination gave positive result to the tests for the presence of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.

CONTRARY TO LAW.<sup>[4]</sup>

The accused-appellant pleaded *not guilty* to the charges at his arraignment on September 15, 2005.<sup>[5]</sup>

The CA summarized the facts and the evidence as follows:

#### Version of the Prosecution

SPO1 Amado Mirasol, Jr. testified that on August 20, 2004, at about 10:00 o'clock in the morning, a male civilian informant arrived at the office of the Anti-Illegal Drugs Operation Task Force Police Office, Zamboanga City, to report about a certain Carmelo (herein accused-appellant) who was a drug pusher and was engaged in selling shabu at his rented house at San Roque, Zamboanga City. After studying the sketch provided by the asset on the area of the residence of Carmelo, he called the members of his group for the mobilization of a possible buy-bust operation. The buy-bust group, composed of him as the team leader and the following police offices: SPO1 Sergio Rivera, SPO1 Roberto Roca, PO2 Ronald Cordero, PO1 Wilfredo Bobon, and PO1 Hilda Montuno.

To start the operation PO1 Montuno prepared five pieces of P100.00 bills which he registered with the Public Prosecutors Office, to be used to buy the illegal drugs. He then conducted a briefing wherein he designated SPO1 Rivera as poseur-buyer and gave him one marked P100.00 bill, while PO2 Cordero acted as back-up and the rest of the group as perimeter security.

At around 2:00 o'clock in the afternoon, on August 20, 2004 the group proceeded to the target area in [an] L-300 van and parked near the gate of the Chinese Cemetery. As he and the rest of the team followed from a distance, SPO1 Rivera and the confidential informant approached a man standing outside a house at San Roque, near the Chinese Cemetery, and they started talking to him. When the conversation stopped, he saw SPO1 Rivera grabbed the man and called out to PO2 Cordero for assistance. Responding to SPO1 Rivera's call for assistance, he and the rest of the team converged to assist in subduing the suspect. Afterwards, SPO1 Rivera showed him the one (1) heat-sealed plastic sachet that the former bought from Carmelo. SPO1 Rivera frisked Carmelo, and saw the marked money used and two (2) more heat-sealed plastic sachet were recovered from Carmelo's right pocket.

The second witness SPO1 Sergio M. Rivera testified that upon arriving in the area, the rest of the group proceeded to their designated post while

he and the confidential informant casually walked towards the house of Carmelo. At about 10 meters away, the informant whispered to him that the person standing near the door was the suspected drug pusher named Carmelo. They continued to walk toward the suspect's house. Their informant approached Carmelo first and asked "do we have now?" to which Carmelo replied "the money?". SPO1 Rivera got one (1) piece of P100.00 bill from the left pocket of his polo and handed it to Carmelo. After receiving the money, Carmelo in return handed one-heat sealed plastic sachet to SPO1 Rivera. Sensing that it contains shabu, SPO1 Rivera informed Carmelo in Visayan dialect that he was a police officer and that Carmelo's selling of shabu is contrary to law.

He then effected the arrest to which Carmelo resisted, but was subdued by him and PO2 Cordero until a handcuff was placed around Carmelo's wrist. He informed Carmelo of his rights and proceeded to search the latter's person, wherein he found two (2) heat-sealed plastic sachet containing white crystalline powder and the marked money in the right pocket of Carmelo's pants. He placed the confiscated sachets in his own pocket until they arrived at their office. In the presence of the Investigator, SPO1 Delumpines, he marked the three (3) sachets with his initials "SMR" before he turned it over to the former.

When SPO1 Rivera was asked by the trial court how he can identify which among the three sachets confiscated is the sachet he bought from Carmelo, SPO1 testified that the sachet he brought from Carmelo is bigger in size than the two sachets he recovered from the latter's pocket.

[6]

#### Version of the Defense

Accused appellant Carmelo testified that on August 20, 2004, at about 2:00 o'clock in the afternoon, he was resting together with his two (2) children inside the house he was renting while his wife was doing laundry outside. He suddenly noticed several armed men in civilian clothes enter the house and started looking for a certain gun. He was familiar with the faces of the men and one of them, SPO1 Mirasol, whom he knew as "Popoy" from his visits in the cockpit in San Roque. He inquired as to what wrong did he commit but he was only handcuffed and told to accompany them to the police station. The men also searched his house but they did not recover anything, and so they proceeded to the police station.

At the police station, he was once again asked where his gun was, to which he answered that he had no gun. Policeman Popoy then demanded from him P30,000.00 in exchange for his release but he did not have any money. A neighbor later arrived at the police station known to him as "Langgay" and to whom he had a fight concerning a cockfighting bet amounting to P5,000.00 that he owed Langgay. He overheard Popoy and Langgay conversing, with Langgay telling Popoy not to release him until he (Langgay) was paid the amount of P5,000.00. As he was not able to pay the demanded amount, he was told that a case for illegal drugs will be filed against him. He was subsequently asked to sign a document, the contents of which he had no knowledge.<sup>[7]</sup>

Said accused's testimony was corroborated by his witness Miguela De Leon.<sup>[8]</sup> x x x

### **Judgment of the RTC**

On May 28, 2004, the RTC rendered judgment finding the accused-appellant guilty as charged,<sup>[9]</sup> disposing thusly:

**WHEREFORE**, all the foregoing considered, this Court hereby finds that accused in:

1. CRIMINAL CASE NO. 20837 GUILTY beyond reasonable for violating Section 5, Article II of R.A. 9165, and hereby sentences him to LIFE IMPRISONMENT and a fine of FIVE HUDNRED THOUSAND PESOS (PHP 500,000.00) without subsidiary penalty in case of insolvency.

2. CRIMINAL CASE NO. 20838 GUILTY beyond reasonable doubt for violating Section 11, Article II of R.A. 9165, and hereby sentences him to suffer the penalty of 12 YEARS AND 1 DAY to 14 YEARS OF IMPRISONMENTS and pay a fine of THREE HUNDRED THOUSAND PESOS (PHP300,000.00) without subsidiary imprisonment in case of insolvency.

**SO ORDERED.**<sup>[10]</sup>

The RTC observed that the testimony of SPO1 Rivera established the elements of the crimes of illegal sale and illegal possession of dangerous drugs; and that the accused-appellant's defense of denial did not overcome the positive testimonies of the Prosecution's witnesses and other evidence like the marked money and the two sachets of *shabu* seized from him.<sup>[11]</sup>

### **Decision of the CA**

On appeal, the accused-appellant contended that the police officers had blatantly disregarded the mandatory requirements of Section 21 of R.A. No. 9165; that the Prosecution did not establish the identity of the sachets of *shabu* with moral certainty considering that SPO1 Rivera had immediately pocketed the sachets of *shabu* even without marking them; that the marking had been done only at the police station; and that the presumption of regularity in the performance of duty did not apply because the officers had not observed the statutory safeguards under Section 21 of R.A. No. 9165.

On April 7, 2017, the CA promulgated the assailed decision affirming the convictions.<sup>[12]</sup> It ruled that the testimony of SPO1 Rivera narrating in detail the entrapment operation had demonstrated that the integrity and evidentiary value of the evidence seized were preserved; that marking at the nearest police station or office of the apprehending team had substantially complied with Section 21 of R.A. No. 9165; that the Prosecution's witnesses deserved full faith and credit in the absence of proof of their ill-motive and bad faith; and that the accused belatedly raised the issue surrounding the chain of custody.

### **Issue**

The accused-appellant presents the following grounds in support of his appeal,<sup>[13]</sup> to wit: