

## SECOND DIVISION

[ G.R. No. 230555, October 09, 2019 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V.  
FELECISIMO[\*] BOMBASI Y VERGARA, ACCUSED-APPELLANT.**

### D E C I S I O N

**LAZARO-JAVIER, J.:**

#### **The Case**

This appeal seeks to reverse the Decision dated July 28, 2016<sup>[1]</sup> of the Court of Appeals in CA-G.R. CR-HC No. 07180, affirming the conviction of appellant Felecisimo Bombasi y Vergara for: (a) violation of Section 5, Article II of Republic Act No. 9165<sup>[2]</sup> (RA 9165) and imposing on him life imprisonment and Five Hundred Thousand Pesos (P500,000.00) fine; and (b) Section 11 of the same act and imposing on him twelve (12) years and one day as minimum to fourteen (14) years and eight months as maximum and Three Hundred Thousand Pesos (P300,000.00) fine.

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

Appellant Felecisimo Bombasi y Vergara was charged with violation of Sections 5 and 11, Article II of RA 9165 under two (2) separate Informations:

#### **Criminal Case No. 11-8056-SPL**

(Section 5, Article II of RA 9165)

That on or about October 27, 2011, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority from the law, did then and there, willfully, unlawfully and feloniously, sell, pass, deliver and convey one (1) small heat-sealed transparent plastic sachet containing zero point zero two (0.02) gram of methamphetamine hydrochloride (*shabu*), a dangerous drug, to a police poseur-buyer in exchange for two hundred peso genuine bill.

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

#### **Criminal Case No. 11-8057-SPL**

(Section 11, Article II of RA 9165)

That on or about October 27, 2011, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without any authority from the law, did then and there, willfully, unlawfully and feloniously have in his possession, control and custody, one (1) small heat-sealed

transparent plastic sachet containing zero point zero two (0.02) gram of methamphetamine hydrochloride (shabu).

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

On arraignment, appellant pleaded not guilty.<sup>[5]</sup> Trial ensued.

PO2 Sonny Xyrus De Leon, PO1 Rick Jaison Almadilla,<sup>[6]</sup> and Forensic Chemist Donna Villa Huelgas testified for the prosecution. On the other hand, appellant and his neighbor Myrna Lacap testified for the defense.

#### *Version of the Prosecution*

On October 27, 2011, around 10 o'clock in the morning, Police Senior Inspector (P/S Insp.) Jaime Pederio, Jr. received a report from a confidential informant that alias "Toto Turat" was involved in illegal drug activities in Barangay Cuyab, San Pedro, Laguna. P/S Insp. Pederio, Jr. relayed the information to the Chief of Police, Police Superintendent (P/Supt.) Kirby John B. Kraft, who instructed them to verify the information. Thus, P/S Insp. Pederio, Jr., PO2 De Leon, PO1 Almadilla, and two (2) confidential informants proceeded to Barangay Cuyab. There, they observed "Toto Turat" and confirmed his illegal drug activities. The team returned to the police station to prepare the buy-bust operation. PO2 De Leon was designated as poseur buyer while PO1 Almadilla and P/S Insp. Pederio, Jr. as back up.<sup>[7]</sup>

Around 12 o'clock in the afternoon, the buy-bust team returned to Barangay Cuyab, San Pedro, Laguna. PO2 De Leon and the confidential informant went to the residence of "Toto Turat." Meantime, the back up team strategically positioned themselves close by and waited for the pre-arranged signal.<sup>[8]</sup>

When PO2 De Leon and the confidential informant reached the house of "Toto Turat," the latter who was up in its terrace saw them. Upon seeing them from the terrace, "Toto Turat" went down. The confidential informant told "Toto Turat" "kukuha kami." To this, the latter asked "kukuha kayo?" They then handed two (2) P100.00 bills to "Toto Turat" who, in turn, drew two (2) small heat-sealed transparent plastic sachet from his pocket and asked PO2 De Leon to choose one. PO2 De Leon took a sachet and slid it into his right pocket. While the confidential informant was conversing with "Toto Turat," PO2 De Leon called P/S Insp. Pederio, Jr. to signal that the sale had been consummated.<sup>[9]</sup>

In response, the back up team immediately closed in. PO2 De Leon introduced himself to "Toto Turat," frisked the latter, and confiscated from him the other small heat-sealed transparent plastic sachet. PO2 De Leon also marked the sachets bought and confiscated with "FB-P1" and "FB-B1" and slid them into his pocket. The buy-bust team arrested "Toto Turat" who was later identified as appellant Felecisimo Vergara Bombasi.<sup>[10]</sup>

At the police station, the team conducted a physical inventory of the seized items and took photographs of appellant, the seized items, and the buy-bust money. The inventory was made in the presence of a media representative. The team prepared a request for laboratory examination of the contents of the small plastic sachets. PO2 De Leon brought the plastic sachets to the crime laboratory where Forensic Chemist Huelgas received them.<sup>[11]</sup>

Per Chemistry Report No. D-616-11, Forensic Chemist Huelgas found the specimens positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.<sup>[12]</sup>

The prosecution offered the following exhibits: "A" to "A-2" - PO2 De Leon's Pinanumpaang Salaysay dated October 27, 2011;<sup>[13]</sup> "B" to "B-2" - PO1 Almadilla's Pinanumpaang Salaysay dated October 27, 2011;<sup>[14]</sup> "C" - Request for Laboratory Examination dated October 27, 2011;<sup>[15]</sup> "D" - Chemistry Report No. D-616-11 dated October 27, 2011;<sup>[16]</sup> "E" - Coordination Form dated October 27, 2011;<sup>[17]</sup> "F" - Pre-Operation Report dated October 27, 2011;<sup>[18]</sup> "G" - Certification of Inventory dated October 27, 2011;<sup>[19]</sup> "H" to "H-1" - photographs;<sup>[20]</sup> "I" to "I-1" - two (2) marked P100.00 bills;<sup>[21]</sup> and "J" to "J-1" - two small heat-sealed transparent plastic sachet marked "FB-B1" and "FB-P1."

#### *Version of the Defense*

On October 27, 2011, between 11 o'clock in the morning and 12 o'clock in the afternoon, appellant was having lunch with his wife and children in his home in Barangay Cuyab, San Pedro, Laguna. Suddenly, PO2 De Leon, whom he frequently saw in barangay fiestas, barged in, asked him to stand up, and frisked him. His wife asked PO2 De Leon why he was being arrested. PO2 De Leon simply replied "ako na bahala dito." PO2 De Leon made him board a police vehicle where other police officers were waiting. He was taken to the police station. He was made to sit in front of a table on top of which PO2 De Leon laid two (2) small plastic sachets.<sup>[22]</sup>

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

By Consolidated Judgment dated November 5, 2014,<sup>[23]</sup> the trial court found appellant guilty as charged, *viz*:

WHEREFORE, foregoing considered, judgment is hereby rendered as follows:

1. In Criminal Case No. 11-8056-SPL, accused Felicisimo Bombasi y Vergara is hereby found GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment (shall) be given full credit.

2. In Criminal Case No. 11-8057-SPL, accused Felicisimo Bombasi y Vergara is (hereby) found GUILTY beyond reasonable doubt of violation of Section 11, Article II of Republic Act No. 9165 and is hereby sentenced to suffer the penalty of twelve (12) years and one day as minimum to fourteen (14) years and eight months as maximum and to pay a fine of Three Hundred Thousand (P300,000.00) pesos without subsidiary imprisonment in case of insolvency.

The period of his preventive imprisonment (shall) be given full credit.

Let the two plastic sachets of shabu subject matter of these cases be immediately forwarded to the Philippine Drug Enforcement Agency for its

disposition as provided by law. The P200.00 buy-bust money is ordered forfeited in favour of the government and deposited in the National Treasury through the Office of the Clerk of Court.

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

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

On appeal, appellant faulted the trial court for rendering a verdict of conviction. He argued<sup>[25]</sup> that the prosecution failed to prove with moral certainty the identity and integrity of the alleged seized drugs. The prosecution witnesses' accounts of the incident were inconsistent. Too, it was not shown how the alleged seized items were handled and stored after it was examined. The marking, inventory, and taking of photograph were done sans the presence of an elected public official and a representative from the Department of Justice (DOJ). Considering these irregularities, the trial court erred in applying the presumption of regularity in the performance of the police officers' duty.

For its part, the Office of the Solicitor General, through Senior State Solicitor M.L. Carmela P. Aquino-Cagampang, countered, in the main:<sup>[26]</sup> (a) the elements of illegal sale and illegal possession of dangerous drugs were all duly proven by the prosecution; (b) the presumption of regularity in the performance of official duties in favor of the arresting officers prevailed over appellant's unsubstantiated denial; and (c) the alleged custodial and procedural lapses did not materially impair the integrity of the seized drugs.

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

By its assailed Decision dated July 28, 2016,<sup>[27]</sup> the Court of Appeals affirmed.

### **The Present Appeal**

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

For the purpose of this appeal, both the OSG and appellant manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals.<sup>[28]</sup>

### **Issue**

Was the chain of custody rule complied with?

### **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>[29]</sup>

The illegal sale and possession of dangerous drugs was allegedly committed on October 27, 2011. The applicable law is RA 9165 before its amendment in 2014.

Section 21 of RA 9165 prescribes the standard in preserving the *corpus delicti* in illegal drug cases, *viz*:

SEC. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drags, 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. (Emphasis supplied)

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The IRR of RA 9165 further commands:

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**Section 21.** (a) The apprehending officer/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: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; (Emphasis supplied)

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To ensure the integrity of the seized drug item, the prosecution must account for each link in its chain of custody. **People v. de Leon**<sup>[30]</sup> enumerates the **links** in the chain of custody which 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 seized from the forensic chemist to the court.

This is the chain of custody rule. It came to fore due to the unique characteristics of illegal drugs which render them indistinct, not readily identifiable, and easily open to