

SECOND DIVISION

[G.R. No. 226492, October 02, 2019]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. EFREN POSOS Y MORFE, AND THELMA GREZOLA Y CABACANG, ACCUSED, EFREN POSOS Y MORFE, ACCUSED-APPELLANT.

DECISION

LAZARO-JAVIER, J.:

The Case

This appeal seeks to reverse the Decision dated December 4, 2015^[1] of the Court of Appeals in CA-G.R. CR-HC No. 06433, affirming the conviction of appellants Efren Posos y Morfe and Thelma Grezola y Cabacang for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165^[2] (RA 9165) and imposing on them life imprisonment and Five Hundred Thousand Pesos (P500,00.00) fine.

The Proceedings Before the Trial Court

Appellants Efren Posos y Morfe and Thelma Grezola y Cabacang were charged with violation of Section 5 in relation to Section 26, Article II of RA 9165 under the following Information:

That on or about the 6th day of September, 2011 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court the above-named accused, conspiring together and mutually helping one another, without being authorized by law, did then and there willfully, unlawfully and feloniously by direct (overt) acts, sell and deliver to SI II LAURA P. NEBATO (who posed as buyer) METHAMPHETAMINE HYDROCHLORIDE (Shabu), weighing 1.0248 grams, without the corresponding license or prescription therefore, and knowing the same to be such.

Contrary to Law.^[3]

On arraignment, appellants pleaded not guilty.^[4] Trial ensued.

Special Investigator 2 Laura P. Nebato, Investigating Officer 1 Nazarion Bongkinki, Investigating Agent 3 Liwanag B. Sandaan, and Forensic Chemist Chris Israel Cabatic testified for the prosecution. On the other hand, Posos, Grezola, and the latter's husband Elorde Grezola testified for the defense.

Version of the Prosecution

On September 5, 2011, around 10 o'clock in the morning, IA3 Sandaan received a report from a confidential informant that alias "Rolly" was involved in illegal drug activities in Barangay Camarin, Caloocan City. The confidential informant told her he could introduce one of her men to "Rolly" and they could order a bag of illegal drugs

from "Rolly."^[5] IA3 Sandaan directed SI2 Nebato to transact with Posos. Later, SI2 Nebato reported she was able to order twenty-five (25) grams of *shabu* from Rolly for a consideration of One Hundred Forty Thousand Pesos (P140,000.00). Rolly instructed them to meet him in Barangay Camarin, Caloocan City on the following day.^[6] They subsequently learned that Rolly's real name is Efren Morfe Posos.^[7]

The next day, or on September 6, 2011, IA3 Sandaan formed a buy-bust team composed of the confidential informant, SI2 Nebato as poseur buyer, IO1 Bongkinki as arresting officer, and IA3 Sandaan, IO1 Diongco, IO1 Paglucauan, and SI2 Almarinos, as back-up.^[8]

Around 2 o'clock in the afternoon of September 6, 2011, the buy-bust team proceeded to Barangay Camarin, Caloocan City.^[9] SI2 Nebato and the confidential informant went straight to Grezola's store on Vanguard Street, where Posos instructed them to wait. Meantime, the backup team strategically positioned themselves nearby and waited for the pre-arranged signal.^[10]

A few minutes later, Posos and Grezola approached SI2 Nebato's vehicle. SI2 Nebato and the confidential informant invited appellants inside the vehicle. The confidential informant introduced SI2 Nebato as buyer to Posos and Grezola. Posos, on the other hand introduced Grezola as the wife of the owner of the drugs to be bought by SI2 Nebato. After an exchange of pleasantries, SI2 Nebato asked for the drugs from Posos. Thereupon, Posos withdrew from his pocket a small plastic sachet. He told SI2 Nebato and the confidential informant to try its contents first, as a sampler. SI2 Nebato, however, insisted for Posos to give them the whole bulk. But Posos insisted on first trying a sampler. When they still refused, Posos got irritated and started throwing invectives at them. Posos also blurted "*magulo kayo kausap.*" To ease the tension, SI2 Nebato agreed to buy the small sachet worth One Thousand Pesos (P1,000.00).^[11]

Posos thus, handed him the small plastic sachet. In turn, SI2 Nebato turned the hazard light to signify that the sale had been consummated.^[12]

On signal, the back-up team immediately closed in. IO1 Bongkinki arrested appellants while SI2 Nebato held on to the small plastic sachet given by Posos, which she slid and kept in her sling bag. Thereafter, IA3 Sandaan instructed the team to go back to their office because a crowd was already starting to gather around them.^[13]

The buy-bust team took appellants and the seized item to their office in Barangay Pinyahan, Quezon City.^[14] There, the team coordinated with the barangay officials to witness the inventory. When Kagawad Jose Ruiz arrived after a few hours, the team conducted a physical inventory of the item and took photographs of appellants with the seized item and the buy-bust money. The team prepared a request for laboratory examination of the contents of the small plastic sachet and request for drug test on appellants. SI2 Nebato took appellants and the plastic sachet to the crime laboratory.^[15] Forensic Chemist Cabatic received the plastic sachet and appellants' urine sample.^[16]

Per Chemistry Report No. PDEA-DD011-334, Forensic Chemist Cabatic found the specimen positive for methamphetamine hydrochloride (*shabu*), a dangerous drug.^[17]

The prosecution offered the following exhibits: "A" to "A-1" - Request for Laboratory Examination dated, September 6, 2011;^[18] "B" to "B-1" - Request for Drug Test dated September 6, 2011;^[19] "C" to "C-1-A" - the seized small plastic sachet and its contents enclosed in a bigger brown envelope; "D"- Chemistry Report No. PDEA-DD011-334 dated September 6, 2011;^[20] "E" - Chemistry Report No. 'PDEA-DT011-332 to PDEA-DT011-333 dated September 6, 2011;^[21] "F" to "F-4" -photographs of the buy-bust money;^[22] "G" to "G-2" - Inventory of Seized Properties/Items dated September 6, 2011;^[23] "H" to "H-7" - photographs;^[24] "J" - Acknowledgement Receipt dated September 6, 2011;^[25] "K" and "K-3"- SI2 Nebato's Affidavit dated September 7, 2011;^[26] "L" to "L-1" - Physical Examination dated September 7, 2011;^[27] "M"- IO1 Bongkinki's Affidavit Reports dated September 7, 2011;^[28] "N" to "O" - Booking Sheets and Arrest Reports dated September 6, 2011;^[29] "P" to "P-1" - Request for Physical Examination dated September 6, 2011;^[30] "Q" - Authority to Operate dated September 6, 2011;^[31] and "R" to "R-1" - Pre-Operation Report dated September 6, 2011.^[32]

Version of the Defense

Defense witnesses Posos, Grezola, and Elorde Grezola testified that:

Salam, an agent of the Philippine Drug Enforcement Agency (PDEA), introduced Posos to SI2 Nebato. SI2 Nebato asked Posos to obtain *shabu* from a certain Allan. When Posos declined, two (2) men held and boarded him into a vehicle.^[33]

Grezola was tending her *sari-sari* store when a man suddenly entered, held, and forced her to board a van parked in front of her store. Together with two (2) companions, the first man dragged her inside the van. There, she saw Posos being held by three (3) men. Both Posos and Grezola were brought to SM Fairview, Quezon City where Grezola was boarded into another vehicle, thus leaving behind Posos inside the first van.^[34]

The men frisked and took from Grezola her money and her mobile phone. While in transit, the men asked Grezola to give them Three Hundred Thousand Pesos (P300,000.00) in exchange for her liberty. She was ordered to call her husband to produce the amount. Grezola was taken to the Quezon City Memorial Circle where they waited for her husband. When her husband did not show up, Grezola was brought to the PDEA office where she saw Posos again.^[35]

At the PDEA office, they learned they were being charged with violation of RA 9165. They were asked to approach a table where *shabu* and money were laid on top. They also noticed the presence of several barangay officials.^[36]

The Trial Court's Ruling

By Judgment dated October 3, 2013,^[37] the trial court found appellants guilty as charged, viz:

WHEREFORE, premises considered, this court finds both accused **Efren Posos y Morfe and Thelma Grezola y Cabacang GUILTY** beyond reasonable doubt for violation of Section 5 in relation to Section 26, Article II of Republic Act No. 9165, otherwise known as the

Comprehensive Dangerous Drugs Act of 2002 and imposes upon them the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (Php500,000.00) each.

The drugs subject manner of this case, with a total weight of 1.0248 grams is hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.

SO ORDERED.^[38]

The Proceedings Before the Court of Appeals

On appeal, appellants faulted the trial court for rendering a verdict of conviction. They argued:^[39] (1) they were merely arrested sans warrant;^[40] (2) no prior surveillance or test buy was conducted on them;^[41] and (3) the prosecution failed to prove with moral certainty the identity and integrity of the alleged seized drugs because the arresting officers did not properly comply with the chain of custody rule considering that the marking, inventory, and taking of photographs were done only at the PDEA office, sans the required witnesses, and it was not shown how the alleged seized item was handled after its examination.^[42]

For its part, the Office of the Solicitor General, through Assistant Solicitor General Ma. Antonia Edita C. Dizon and Associate Solicitor Elvira Joselle R. Castro, countered, in the main: (a) all the elements of illegal sale of dangerous drugs were duly proven by the prosecution;^[43] (b) the presumption of regularity in the performance of official duties in favor of the arresting officers prevailed over appellants' unsubstantiated denial;^[44] (c) the alleged custodial breaks and procedural lapses did, not materially impair the integrity of the seized item;^[45] (d) the prosecution was able to sufficiently explain why the marking and inventory were not made in the *situs criminis*. It was because the crowd started to gather at the *situs criminis* which consequently endangered their operation;^[46] and (e) how and who handled the seized item from its confiscation to its examination in the crime laboratory were accounted for.^[47]

The Court of Appeals' Ruling

By its assailed Decision dated December 4, 2015,^[48] the Court of Appeals affirmed.

The Present Appeal

Only Posos seeks affirmative relief from the Court and pleads anew for his acquittal. As for Grezola, the Court of Appeals issued a Partial Entry of Judgment on January 5, 2016.^[49]

For the purpose of this appeal, both the OSG and appellant Posos manifested that in lieu of supplemental briefs, they were adopting their respective briefs before the Court of Appeals;^[50]

Issues

1. Were all the elements for illegal sale of dangerous drugs under Section 5, Article II of RA 9165 shown?

2. Was the chain of custody rule complied with?

Ruling

The element of payment required in the charge of illegal sale of dangerous drugs was not shown in this case

Posos and Grezola were charged with illegal sale of dangerous drugs allegedly committed on September 6, 2011. This offense requires the following elements: (a) the identity of the buyer and the seller, the object and the consideration; and (b) the delivery of the thing sold and the payment.^[51]

Here, the second element, *i.e.*, delivery of the payment, was not shown to have been done by SI2 Nebato who testified:

Q: What happened next, Madam Witness?

A: Since I already mentioned that I have the money with me and he was already throwing invectives towards us and the situation is already constrained, I agreed to buy the shabu worth One Thousand Pesos (Php1,000.00). So, @Rolly gave me one (1) piece of heat sealed transparent plastic sachet containing shabu, sir.

Q: What did you do with the money?

A: Before I handed to @Rolly the money in exchange of one (1) plastic sachet, I turned on the hazard light of our vehicle, sir.

Q: After you gave the pre-arranged signal to your companion, what happened next, Madam Witness?

A: My companion swiftly rushed to the scene, sir.

Q: What did they do?

A: They effected the arrest of @Thelma and @Rolly (who) was throwing invectives towards us x x x^[52]

xxx xxx xxx

Q: How about the buy bust money, what happened to that buy bust money?

A: It remained in my possession sir.^[53]

xxx xxx xxx

In fine, SI2 Nebato was not able to deliver the payment to Posos. In fact, the supposed payment remained in his possession. In ***People v. Hilario, et al.***,^[54] the Court emphasized that all the stages of the sale must be duly established, thus

In *People v. Doria*, we stressed the "*objective*" test in buy-bust operations. We ruled that in such operations, **the prosecution must**