

THIRD DIVISION

[G.R. No. 229669, November 27, 2019]

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS.
ESRAFEL DAYON Y MALI @ "BONG," ACCUSED-APPELLANT.**

D E C I S I O N

ZALAMEDA, J.:

This appeal^[1] assails the Decision^[2] promulgated on 14 December 2015 by the Court of Appeals (CA) in CA-G.R. CR-HC No. 07178, which affirmed the Decision^[3] rendered on 11 December 2014 by Branch 2. Regional Trial Court (RTC) of Manila, in Criminal Case No. 13-299147, finding accused-appellant Esrafel Dayon y Mali @ "Bong" (accused appellant) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (RA) 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

Antecedents

On 14 August 2013, an Information was filed charging accused-appellant with illegal sale of shabu, defined and punished under Section 5, Article II of RA 9165, to wit:

That on or about **August 06, 2013**, in the City of Manila, Philippines, the said accused not having been authorized by law to sell, trade, deliver, transport or distribute or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a police officer / poseur[-]buyer one **(1) heat-sealed transparent plastic sachet marked as "BONG" containing ZERO POINT ZERO FOUR ZERO (0.040) gram of white crystalline substance** commonly known as Shabu, containing Metamphetamine Hydrochloride, a dangerous drug.

Contrary to law.^[4] (Emphasis in the original)

Upon arraignment, accused-appellant pleaded "not guilty." After the termination of pre-trial, trial on the merits ensued.

Version of the Prosecution

On 06 August 2013, a team from the Philippine National Police Moriones Tondo Police Station 2, in coordination with the Philippine Drug Enforcement Agency, conducted a buy-bust operation in Tondo, Manila, against a certain "Bong," which they later identified as accused-appellant. During the buy-bust, accused-appellant sold and handed to the poseur-buyer one (1) heat-sealed transparent plastic sachet containing white crystalline substance suspected to be *shabu*. The team

photographed, marked, and inventoried the seized item at the place of arrest in the presence of accused-appellant, as well as a member of the media, and claimed efforts were made to summon *barangay* officials, but the latter refused due to fear of reprisal and notoriety at the place of arrest.^[5] Thereafter, the seized item was brought to the crime laboratory, which confirmed that the plastic sachet contained 0.040 gram of metamphetamine hydrochloride, a dangerous drug.^[6]

Version of the Defense

Accused-appellant denied the charges against him and averred he was arrested on 05 August 2013 while on his way to 168 Mall in Divisoria. He was approached by three (3) men in civilian clothing, and frisked. One of the men said, "*isama na rin yan*," (include him also). He saw that there was another man, already handcuffed, in the *kuliglig*, a motorized pedicab, he was made to board. When accused-appellant asked the other man where they were going, the latter replied, "*sa prisinto*," (to the precinct). He found out later that the man with him in the *kuliglig* was named Bong. When confronted with the marked photograph of his arrest with another man, accused-appellant explained that the photograph was taken at the precinct where the police officers just placed evidence on his lap, and the name of the other man in the photograph was Bong. Accused-appellant insisted his nickname was "*Piyel*."^[7] Accused-appellant further claimed the police officers demanded P100,000.00 from him in exchange for his release. He told them it was impossible for him to come up with that amount as he was jobless and his wife earned only P170.00 per day. They told him, "*kayang-kaya mo, tawagan mo yung magulang mo*," (you can afford it, call your parents).^[8]

Ruling of the RTC

On 11 December 2014, the RTC convicted accused-appellant of the crime charged. The RTC disposed:

WHEREFORE judgment is hereby rendered finding accused Esrafel Dayon y Mali GUILTY beyond reasonable doubt of the crime charged in Crim. Case No. 13-299147 and is hereby sentenced to life imprisonment and to pay a fine of P500,000.00.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal and in accordance with the law and rules.

SO ORDERED.^[9]

Ruling of the CA

On 14 December 2015, the CA promulgated its assailed Decision affirming accused-

appellant's conviction, thus:

WHEREFORE, the appeal is **DENIED**. The December 11, 2014 Decision of the Regional Trial Court, Branch 2, Manila. in Criminal Case No. 13-299147 convicting appellant for violation of Section 5. Article II of Republic Act No. 9165 is hereby **AFFIRMED**.

SO ORDERED.^[10] (Emphasis in the original)

Hence, this appeal.^[11]

Issues

Accused-appellant claims the court *a quo*:

I

X X X GRAVELY ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE A VALID BUY-BUST OPERATION.

II

X X X GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE INTEGRITY AND IDENTITY OF THE SEIZED PLASTIC [SACHET] OF METAMPHETAMINE HYDROCHLORIDE.^[12]

Ultimately, the controversy boils down to whether or not the court *a quo* correctly convicted accused-appellant for the crime of illegal sale of dangerous drugs.

Ruling of the Court

We find merit in the appeal.

To ensure conviction for illegal sale of dangerous drugs, the following elements constituting the crime must be present: (a) the identities of the buyer and seller, the object of the sale, and the consideration; and (b) the delivery of the thing sold and the payment for the thing. The presentation of the seized drugs as evidence in court is indispensable in every prosecution for the illegal sale of dangerous drugs because the drugs seized are the *corpus delicti* of the crime. As such, the State should establish beyond doubt the identity of the dangerous drugs by showing that the drugs offered in court as evidence were the same substances bought during the buy-bust operation. This requirement is complied with by ensuring that the custody of the seized drugs from the time of confiscation until presentation is safeguarded under what is referred to as the chain of custody by RA 9165, whose objective is to remove unnecessary doubts concerning the identity of the evidence.^[13]

As part of the chain of custody procedure, RA 9165 requires that the marking, physical inventory, and photographing of the seized items be conducted immediately after their seizure and confiscation. The law further requires that the inventory and photographing be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if **prior** to the amendment of RA 9165 by RA 10640,^[14] "a representative from the media AND the Department of Justice (DOJ), and any elected public official"; or (b) if **after** the amendment of RA 91 65 by RA 10640, "[an) elected public official and a representative of the National Prosecution Service OR the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."^[15]

The Information charges accused-appellant of committing the crime on 06 August 2013, prior to the effectivity of the amendatory law, RA 10640.^[16] Section 21 of R.A 9165, as complemented by Section 21 (a) of Article II of its Implementing Rules and Regulations (IRR), requires that immediately after seizure and confiscation of the suspected drug, it should be physically inventoried and photographed in the presence of the following witnesses: (a) the accused or person/s from whom the items were seized and confiscated, or his representative or counsel; (b) a representative from the media AND the Department of Justice (DOJ); and (c) any elected public official.

The marking, inventory, and photographing of the seized items in this case were conducted immediately at the place of the seizure and arrest. But the prosecution failed to establish the crucial presence of ALL witnesses required by R.A. 9165. As testified to by prosecution witness SPO1 Joel Sta. Maria, only a representative from the media was present out of the required third-party Witnesses:

Q Now, Mr. Witness. did you take pictures at the place of the arrest?

A PO3 Jimenez took the picture while I made the marking and the inventory, sir.

Q But this picture was taken where. Mr. Witness?

A At the place of the arrest, sir, Purok 2, Isla Puting Bato, sir.

Q At the presence of whom. Mr. Witness?

A Both accused, sir.

Q No one else?

A The media, sir.

Q Media was here?

A Yes. sir.

Q During the time of the arrest?

A Yes. sir.

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Q He was at the place of the arrest, Mr. Witness? Are you sure?