

THIRD DIVISION

[G.R. No. 214759, April 04, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. DINA CALATES Y DELA CRUZ, ACCUSED-APPELLANT.

DECISION

BERSAMIN, J.:

The lack of any justification tendered by the arresting officers for any lapses in the documentation of the chain of custody of confiscated dangerous drugs warrants the acquittal of the accused in a prosecution for the illegal sale of dangerous drugs on the ground of reasonable doubt. The accused has no burden to prove her innocence.

The Case

We review the decision promulgated on May 29, 2014,^[1] whereby the Court of Appeals (CA) affirmed the conviction for a violation of Section 5, Article II of Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) of accused Dina Calates y dela Cruz (Dina) handed down by the Regional Trial Court (RTC) in Bacolod City through its judgment rendered in Criminal Case No. 03-24786 on April 21, 2009.^[2]

Antecedents

On April 24, 2003, the accused was charged in the RTC with violation of Section 5 of R.A. No. 9165 under the following information docketed as Criminal Case No. 03-24786, to wit:

That on or about the 22nd of April, 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another; distribute, dispatch in transit or transport any dangerous drug, did, then and there willfully, unlawfully and feloniously sell, deliver, give away to a police poseur-buyer in a buy-bust operation, one heat-sealed transparent plastic sachet containing methylamphetamine hydrochloride or shabu, a dangerous drug weighing 0.03 gram, in exchange for a price of P100.00 in marked money of P100.00 bill with Serial No. P915278, in violation of the aforementioned law.

CONTRARY TO LAW.^[3]

The CA summarized the antecedent facts as follows:

The evidence for the prosecution is summarized as follows:

In the morning of April 20, 2003 Insp. Jonathan Lorilla received an information from a reliable informant that alias "Dangdang" Calates is engaged in sale of illegal drug activities. Insp. Lorilla verified if the information is true through a police asset. During the briefing, PO1 Sonido acted as the poseur-buyer with the asset, Insp. Lorilla as team leader and with PO2 Malate, PO2 Villeran, PO2 Perez and PO2 Belandrez as back-up security. About 10:50 or 10:55 am of April 22, 2003, the group all in civilian clothes, proceeded to 27th Calamba Street, Purok Sigay, Barangay 2. PO1 Sonido and the asset went ahead of the group. They entered the place, a woman with "semi-calbo" and sporting blond hair, met the duo and asked if they would buy shabu. PO1 Sonido and the asset, alias "Toto", wiped their nostrils with their right finger, meaning their answer to the question is "yes". The accused extended her left hand to receive the marked money which PO1 Sonido gave her (accused), while the latter took a small sachet of suspected shabu from her right pocket and gave it to PO1 Sonido. Thereafter, PO1 Sonido immediately arrested the accused, identified himself as police officer, PO1 Sonido informed her of the reason of her apprehension and her rights to remain silent and counsel. When the other member of the team saw that the accused was arrested, they rushed towards PO1 Sonido and rendered assistance by putting the accused to a manacle.

The marked money was recovered and the sachet of shabu was marked "ASS" which stands for Alain S. Sonido. Thereafter, the incident was recorded in the police blotter and the plastic sachet of shabu was brought to the PNP Crime Laboratory.

The evidence for the defense is also summarized as follows:

Accused Dina Calates claimed that at 11:00 o'clock in the morning of April 22, 2003, she was cooking food for lunch at her residence in 27th Calamba Extension, Bacolod City. During that time a commotion took place outside her house. Together with her husband Joemar and a certain Luz, the accused went outside to see what was happening. They saw a person lying face down and handcuffed, 15 meters away from their location. The man was "Limuel Canlas". He was surrounded by about eight persons and among them, were Police Officers Dennis Belandrez and Jonathan Lorilla. The accused went back to her house and when she went outside again to pick up her son's slippers, Insp. Lorilla suddenly handcuffed her from behind. The latter asked Insp. Lorilla why she was arrested. The latter replied "you are also selling shabu". The policemen went inside and searched her house without search warrant, but they recovered nothing. The accused was brought to BAC-Up 2 (police station).^[4]

Judgment of the RTC

As stated, the RTC convicted the accused through the decision dated April 21, 2009, disposing thusly:

WHEREFORE, finding accused DINA CALATIS y De La Cruz alias "Dangdang" guilty beyond reasonable doubt of Violation of Section 5, Article II of R.A. No. 9165 (Sale, Delivery, etc. of [D]angerous Drugs) as herein charged, judgment is hereby rendered sentencing her to suffer LIFE IMPRISONMENT and to pay a fine of P500,000.00. She is also to bear the accessory penalty prescribed by law. Cost against accused.

The one (1) sachet of shabu (Exh. "B-3"-0.03 gram) brought/recovered from accused, being a dangerous drug, is hereby ordered confiscated and/or forfeited in favor of the government and to be forthwith delivered or turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

The immediate commitment of accused to the national penitentiary is likewise hereby ordered.

SO ORDERED.^[5]

The RTC observed that the testimonies of the Prosecution's witnesses were credible; that the Prosecution thereby established all the elements of the crime of illegal sale of dangerous drugs defined and punished under Section 5 of R..A. No. 9165; and that Dina's denial did not overcome her positive identification as the drug pusher by the Prosecution's witnesses.

Decision of the CA

On appeal, the CA affirmed the conviction upon noting that the Prosecution had successfully proved all the elements of the crime charged; that the Prosecution had showed that the police authorities had preserved the integrity and evidentiary value of the dangerous drug confiscated from the accused until its presentation as evidence in court; that the alleged inconsistency in the testimonies of the Prosecution's witnesses became immaterial considering that Dina had personally sold the dangerous drug to PO1 Sonido; that there had been no gap or missing link in the chain of custody of the confiscated drug despite the fact that no inventory and pictures had been taken; and that the lack of inventory and photographing was not fatal.^[6] The *fallo* reads:

WHEREFORE, the April 21, 2009 Decision of the Regional Trial Court, Branch 47, Bacolod City in Criminal Case No. 03-24786 convicting the accused appellant Dina Calates y De La Cruz of Violation of Section 5, Article II of R.A. 9165 or the Comprehensive Dangerous Drugs Act is **AFFIRMED**. With costs against the accused-appellant.

SO ORDERED.^[7]

Hence, this appeal.

Issues

For purposes of this appeal, the Office of the Solicitor General^[8] and the Public Attorney's Office^[9] manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In her appellant's brief, Dina argues that the Prosecution did not prove her guilt beyond reasonable doubt; that the testimonies of the Prosecution's witnesses had doubtful credibility; that there had been another drug operation at the same place, date and time that led to the arrest of one Cromwell Canlas; that it was improbable for the police operatives to have conducted the operation against Canlas and to still conduct another operation against her just five minutes later on; that the identity of the *corpus delicti* had been compromised by the lack of the inventory and the non-taking of photographs in her presence, and in the presence of any representative from the media and the Department of Justice, as required by Section 21 of R.A. No. 9165; that the Prosecution did not even bother explaining why the procedures prescribed by the law had not been complied with; and that because of the irregularities, substantial gaps attended the chain of custody of the seized drug and rendered the identity of the drug highly suspicious.

In response, the OSG maintains that the entrapment of Dina was with due regard for her rights under the law; that the police operatives properly performed their duties in the conduct of the operation against her; that there was no reason to doubt the credibility of the testimonies of the Prosecution's witnesses; and that the non-compliance with the procedure laid down in Section 21 of R.A. No. 9165 did not necessarily render the seizure of the drug illegal or cast doubt on the identity of the drug because the Prosecution was able to show that there had been no gaps in the chain of custody starting from the initial marking until the eventual presentation of the drug in court.

Ruling of the Court

The appeal is meritorious.

In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden not only of proving the elements of the offenses of sale of dangerous drug and of the offense of illegal possession of dangerous drug, but also of proving the

corpus delicti, the body of the crime. *Corpus delicti* has been defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, it means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two things, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of this act or result. The dangerous drug itself is the very *corpus delicti* of the violation of the law prohibiting the illegal sale or possession of dangerous drug. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* when the drug is missing, or when substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in court.^[10] As such, the duty to prove the *corpus delicti* of the illegal sale or possession of dangerous drug is as important as proving the elements of the crime itself.

The arrest of Dina following the seizure of the illegal substance resulted from the buy-bust operation. Although buy-bust operations have become necessary in dealing with the drug menace, it has also been acknowledged that buy-bust operations were susceptible to abuse by turning them into occasions for extortion.^[11] Addressing the possibility of abuse, Congress prescribed procedural safeguards to ensure that such abuse would be circumvented. The State and its agents are thereby mandated to faithfully observe the safeguards in every drug-related operation and prosecution.^[12]

The procedural safeguards cover the seizure, custody and disposition of the confiscated drug. Section 21 of R.A. No. 9165, as amended, relevantly provides:

Sec. 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, 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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment **shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, That the physical inventory and photograph shall be**