

THIRD DIVISION

[G.R. No. 225497, July 23, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
MARCIANO UBUNGEN Y PULIDO, ACCUSED-APPELLANT.**

DECISION

MARTIRES, J.:

This is an appeal from the 31 March 2015 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04686, which affirmed the 29 July 2010 Decision^[2] of the Regional Trial Court, Branch 66, San Fernando City, La Union (RTC), in Criminal Case No. 7580, convicting defendant-appellant Marciano Ubungen y Pulido (*Marciano*) for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

THE FACTS

In an Information, dated 12 February 2007, Marciano was charged with the crime of violation of Section 5, Article II of R.A. No. 9165. The accusatory portion of the information reads:

That on or about the 17th day of January 2007, in the City of San Fernando (La Union), Philippines, and within the jurisdiction of this Honorable Court the above-named accused, did then and there willfully, unlawfully and feloniously sell and deliver one (1) heat-sealed transparent plastic sachet containing methamphetamine hydrochloride otherwise known as "*shabu*," weighing ZERO POINT ZERO FIFTY FOUR (0.054) gram to one PO1 ABUBO who posed as poseur buyer thereof and in consideration of said *shabu*, used marked money, two (2) hundred peso bills (P200.00) with Serial Nos. AH425840 and AB205120, without first securing the necessary permit or license from the proper government agency.

CONTRARY TO LAW.^[3]

On 21 March 2007, Marciano was arraigned and, with the assistance of counsel, pleaded not guilty to the crime charged.^[4]

Evidence for the Prosecution

The prosecution presented two witnesses, namely: PO1 Jimmy Abubo (*PO1 Abubo*), the police officer who acted as the poseur-buyer; and PO1 Armando Bautista (*PO1 Bautista*), a police officer detailed at the Philippine Drug Enforcement Agency (PDEA) at the time material to the case, and a member of the buy-bust team.

The prosecution also presented the forensic chemist, Police Inspector Meilani Joy R. Ordoño (*PI Ordoño*), but the RTC dispensed with her testimony in an Order,^[5] dated 18 September 2008, in view of the defense's admission of the stipulations offered by the prosecution with respect to the following: (1) the specimen as indicated in the Chemistry Report; (2) the findings as stated in the Chemistry Report; and (3) the due execution and genuineness of the Chemistry Report.^[6]

The combined testimonies of the prosecution witnesses tended to establish the following:

On 17 January 2007, at around 8:30 a.m., PO1 Abubo was in their office at the Philippine National Police, Region I, 2nd Regional Mobile Group (*2nd RMG*), Bio, Tagudin, Ilocos Sur, when a friend arrived and reported to him the rampant selling of *shabu* at Pagdalagan, San Fernando City, La Union, by a certain "*Ciano*." PO1 Abubo referred the matter to his Commanding Officer, Police Senior Inspector Christopher Rebujo (*PSI Rebujo*) who, in turn, relayed the information to the PDEA Region I.^[7]

After verifying that "*Ciano*" was included in the PDEA's watchlist, PO1 Abubo, the informant, and four (4) other police officers from 2nd RMG proceeded to the PDEA office at San Fernando City, La Union, for a briefing.^[8] Thereafter, a team consisting of 2nd RMG personnel and PDEA agents was formed to conduct an entrapment operation. Two (2) one hundred-peso bills were prepared as marked money, and PO1 Abubo was designated as the poseur-buyer.^[9] The team then proceeded to the house of "*Ciano*" at Pagdalagan, San Fernando City, La Union.^[10]

Later, PO1 Abubo and the informant arrived outside the target's house,^[11] while the other members of the buy-bust team, including PO1 Bautista and a certain PO1 Lagto, positioned themselves in the vicinity.^[12] The informant introduced "*Ciano*" to PO1 Abubo as Marciano Ubungen;^[13] while PO1 Abubo was introduced as the buyer of *shabu*. Marciano then asked how much PO1 Abubo wanted to buy. PO1 Abubo replied he was buying *shabu* worth P200.00 and handed Marciano the marked bills. Marciano entered his house and when he came back, he handed one (1) small plastic sachet to PO1 Abubo.^[14] Immediately after receiving the sachet, PO1 Abubo called PO1 Lagto by cellphone, their pre-arranged signal.^[15] Thereafter, the members of the buy-bust team arrested Marciano and recovered the marked bills from him.^[16] Meanwhile, PO1 Abubo placed the markings "JA" on the plastic sachet.^[17]

After the buy-bust operation, Marciano was taken to the PDEA office in San Fernando City, La Union, where they conducted an inventory and prepared the booking sheet, affidavit of arrest, request for physical examination of Marciano, and request for laboratory examination of the specimen seized from him.^[18]

Chemistry Report No. D-004-07,^[19] dated 17 January 2007, and prepared by PI Ordoño revealed that the contents of a small heat-sealed transparent plastic sachet marked as "A JA" tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug. However, PI Ordoño did not take the witness stand to verify the contents of Chemistry Report No. D-004-07 because the RTC dispensed with her

testimony in view of the stipulations reached by the parties.

The prosecution further submitted in evidence the following, among others: (1) Request for Laboratory Examination of the contents of the heat sealed transparent plastic sachet seized from Marciano, signed by PSI Rebujo (Exhibit "D")^[20]; (2) Certificate of Inventory, signed by PO1 Abubo (Exhibit "E")^[21]; (3) two P100-bills (Exhibit "F")^[22]; and (4) Chemistry Report No. D-004-07, prepared by PI Ordoño (Exhibit "G").^[23]

Evidence for the Defense

On its part, the defense presented Marciano himself and his nephew, Gilbert Ubungen (*Gilbert*). Their combined testimonies sought to establish Marciano's innocence, as follows:

On 17 January 2007, at around three o'clock in the afternoon, Marciano, together with Gilbert, Wilfredo 'Pido' Pancho (*Wilfredo*), and Ricky Ducusin were drinking at a neighbor's house in Padalagan Norte, San Fernando City, La Union, when six non-uniformed policemen arrived. The policemen arrested Marciano, Gilbert, and Wilfredo and brought them to Camp Diego Silang in San Fernando City, La Union, where they were detained for three (3) days.^[24] On the third day of their detention, the three were brought to Camp Florendo in San Fernando City, La Union, for drug tests. Afterwards, Marciano was brought back to Camp Diego Silang; Pido and Gilbert were released.^[25]

In fine, Marciano denied the accusations against him. He insisted that no explanation was given him on why he was arrested or made to undergo drug tests.^[26]

The RTC Ruling

In its decision, the RTC found Marciano guilty of violating Section 5, Article II of R.A. No. 9165. The trial court gave credence to the testimonies of PO1 Abubo and PO1 Bautista ratiocinating that they gave a candid, clear, and straightforward narration of the events leading to the arrest of Marciano. In fine, the trial court was convinced that the prosecution was able to establish all the elements of illegal sale of drugs. The dispositive portion reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Marciano Ubungen GUILTY beyond reasonable doubt for violating Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to life imprisonment and a fine of five hundred thousand pesos (P500,000.00).

SO ORDERED.^[27]

Aggrieved, Marciano appealed before the CA.

The CA Ruling

In its assailed decision, the CA affirmed that of the RTC. The appellate court

concurred with the trial court's assessment that the prosecution, through the testimony of PO1 Abubo, had successfully established the elements of the crime of illegal sale of drugs. It was also convinced that the integrity and evidentiary value of the drug seized from Marciano was preserved by the prosecution. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the instant APPEAL is hereby DENIED for lack of merit. Accordingly, the Decision dated July 29, 2010 rendered by RTC, Branch 66, City of San Fernando, La Union, in Criminal Case No. 7580 is hereby AFFIRMED.

SO ORDERED.^[28]

Hence, this appeal.

ISSUES

Marciano manifested that he would re-plead and adopt all the arguments raised in his Appellant's Brief, dated 28 March 2011,^[29] as follows:

I.

THE COURT A QUO GRAVELY ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH ACCUSED-APPELLANT'S GUILT BEYOND REASONABLE DOUBT.

II.

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROCEDURAL LAPSES ON THE PART OF THE POLICE OFFICERS IN THE CUSTODY OF THE SEIZED ILLEGAL DRUG.

III.

THE COURT A QUO GRAVELY ERRED IN RENDERING A JUDGMENT OF CONVICTION DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY.^[30]

THE COURT'S RULING

The appeal is meritorious.

Jurisprudence teaches that to secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165, the prosecution must establish the following elements: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.^[31] What is material is the proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*.^[32]

In cases of illegal sale and illegal possession of dangerous drugs, the dangerous drug seized from the accused constitutes the *corpus delicti* of the offense. Thus, it is of utmost importance that the integrity and identity of the seized drugs must be

shown to have been duly preserved. The chain of custody rule performs this function as it ensures that unnecessary doubts concerning the identity of the evidence are removed.^[33]

The chain of custody is established by testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received, and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.^[34]

In particular, the following links should be established in the chain of custody of the confiscated item: *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.^[35]

With these considerations and after a thorough review of the records of this case, the Court opines that the prosecution failed to establish an unbroken chain of custody of the seized drugs in violation of Section 21, Article II of R.A. No. 9165. The identity of the subject drug was therefore not established with moral certainty.

As already stated, the only witnesses presented by the prosecution are PO1 Abubo and PO1 Bautista who both participated in the buy-bust operation allegedly conducted against Marciano. While the two witnesses were able to establish the first link in the chain of custody with their respective testimonies regarding the arrest of Marciano and the seizure of the prohibited drug from him as well as the marking thereof, their testimonies were insufficient to establish the remaining three (3) links in the chain of custody.

First, the prosecution failed to show the second link in the chain of custody as no testimony was offered relating to the transmittal of the subject sachet from the arresting officer to the investigating officer. During his direct examination, PO1 Abubo narrated the actions his team took after the buy-bust operation. He also enumerated the documents which would prove that the said actions were indeed undertaken, thus:

PROS. MANGIBIN:

Q. Now Mr. Witness, after arresting the accused, you went to PDEA, what did you do there?

A. The subject and the confiscated evidence were submitted to the PNP Crime Laboratory for technical analysis, sir.

Q. Do you have documents to show that you have done that Mr. Witness?

A. Yes, sir.