

FIRST DIVISION

[G.R. No. 216062, September 19, 2018]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. HILARIO NEPOMUCENO Y VISAYA @ "BOK", ACCUSED-APPELLANT.

DECISION

BERSAMIN, J.:

This appeal seeks the review and reversal of the decision promulgated on May 16, 2014,^[1] whereby the Court of Appeals (CA) upheld the conviction of the accused-appellant handed down by the Regional Trial Court (RTC) in Manila in Criminal Case No. 08-259713 and Criminal Case No. 08-259714, respectively, for the violation of Section 5, Article II, Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and the violation of Section 11(3) of the same law through the judgment dated May 3, 2012.^[2]

The RTC imposed life imprisonment and a fine of P500,000.00 for the violation of Section 5, and the indeterminate sentence of 12 years and one day, as minimum, to 15 years, as maximum, and fine of P300,000.00 for the violation of Section 11(3).^[3]

Antecedents

The Office of the City Prosecutor of Manila filed against the accused-appellant the following informations dated February 28, 2008, to wit:

Criminal Case No. 08-259713

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO ZERO gram (0.020g), known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

Criminal Case No. 08-259714

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control white crystalline substance contained in one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO THREE gram (0.023g), known as

'SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

The CA summarized the factual and the procedural antecedents in its assailed decision, viz.:

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:

On February 20, 2008, confidential informant reported to Police Inspector John Guiagi, head of Station Anti-Illegal Drugs (SAID) in Police Station 3, and informed him that an alias "Bok" was selling drugs in Felix Huertas St., Sta. Cruz, Manila. He instructed PO2 Boy Nino Baladjay and PO2 David Gonzales to take the confidential informant with them and conduct surveillance on the target. After confirming the information, Gonzales prepared a pre-operation report and a coordination form with the PDEA to conduct buy-bust operation on the next day.

On February 21, 2008, Guiagi briefed Baladjay, SPO3 Morales and PO1 Cabocan on the conduct of the buy-bust operation. Baladjay prepared three (3) marked one hundred pesos (Php100.00) bills and he was designated as poseur buyer. They left the police station around 3:30 p.m. and proceeded to Felix Huertas St., near Fabella Hospital. Upon arrival, the confidential informant pointed to appellant and together with Baladjay, they approached the target. Baladjay was introduced to appellant by informant (sic) as a buyer. Appellant asked Baladjay, "*magkano?*" to which he replied three hundred pesos (Php300.00). Appellant then pulled from his pocket two (2) small plastic sachets containing white crystalline substance and asked Baladjay to pick one. After Baladjay picked one (1) sachet, he gave the three hundred pesos (Php300.00) to appellant and executed the pre-arranged signal. Baladjay then introduced himself as a police officer and arrested appellant. Baladjay recovered the other sachet and the marked money. Several persons tried to prevent the arrest hence they had to first bring appellant to the police station before marking the sachets and the money.

Subsequent laboratory examination of the sachets' contents confirmed it was *methylamphetamine hydrochloride*, otherwise known as *shabu*.

In his *Brief*, Appellant's version of the facts is as follows:

On February 21, 2008, at around 4:00 o'clock in the afternoon, Bok (Appellant) was on his way, coming from his work as a welder, when two (2) men riding in tandem on a motorcycle pulled over and asked him "where is the house of Hilario?" Bok replied that it was he, and was asking them "why," when he suddenly noticed five (5) other men, three (3) of which were in civilian clothing while the other two (2) were in police uniform, on board a car. The men on the motorcycle informed Bok that they wanted to invite him to the police station to ask him some question (sic). Tired and with hurting eyes, Bok told the policemen to ask him on the spot, but it fell on deaf ears. Curious, Bok decided to just go with them.

At the police station, Bok was surprised when he was suddenly detained inside the cell. Bok repeatedly asked the policemen the reason for his detention, but no one answered. Bok later found out that he was being charged for being a pusher when no illegal drug was ever found or recovered from him.^[4]

Judgment of the RTC

As stated, the RTC convicted the accused-appellant of the crimes charged upon finding that the Prosecution had sufficiently and credibly proved all the elements of illegal sale and illegal possession of dangerous drugs, or *shabu*. It held that the arresting officers were entitled to the presumption of the regularity of the performance of their functions, which justified declaring them to have complied with the procedures prescribed by law for the preservation of the integrity of the confiscated evidence. The RTC disposed thusly:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **HILARIO NEPOMUCENO y VISAYA @ Bok GUILTY** beyond reasonable doubt:

1. In **CRIM. CASE NO. 08-259713**, of the crime of Violation of Sec. 5, Article II, Republic Act 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of **P500,000.00**; and
2. In **CRIM. CASE NO. 08-25714**, of the crime of Violation of Sec. 11 (3), Article II, Republic Act 9165, and is hereby sentenced to suffer imprisonment of **Twelve (12) years and one (1) day**, as minimum, to **Fifteen (15) years**, as maximum, and to pay fine in the amount of **P300,000.00**.

Cost against the accused.

SO ORDERED.^[5]

Decision of the CA

On appeal, the CA affirmed the convictions, observing that the Prosecution had established that the police officers were able to preserve the integrity of the confiscated dangerous drugs despite the non-compliance with the procedural requirements stated in Section 21 of R.A. No. 9165; and that the chain of custody of the dangerous drugs in question was further shown to have been unbroken. The *fallo* reads:

WHEREFORE, the instant appeal is **DISMISSED**. The *Decision* dated 3 May 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case Nos. 08-259713 and 08-259714 is hereby **AFFIRMED**.

SO ORDERED.^[6]

Issues

In this appeal, the Office of the Solicitor General (OSG) as counsel of the Prosecution^[7] and the Public Attorney's Office (PAO) as counsel of the accused-

appellant,^[8] separately manifested that for purposes of this appeal they were no longer filing supplemental briefs, and adopted their respective briefs submitted to the CA.

Accordingly, the accused-appellant continues to argue that he was entitled to acquittal because of the non-compliance by the apprehending officers with the procedural requirements stated in Section 21 of R.A. No. 9165; that the Prosecution did not justify the non-compliance by the apprehending officers with the post-arrest requirements of Section 21 of R.A. No. 9165; and that such non-compliance was sufficient reason to doubt the integrity of the confiscated dangerous drugs as the substances seized from him.

In response, the OSG submits that the mere non-compliance with the procedural post-operation requirements of Section 21 of R.A. No. 9165 did not engender doubts as to the integrity of the confiscated dangerous drugs considering that, as the RTC correctly found, the integrity of the seized drugs as evidence of the *corpus delicti* had been preserved.

Ruling of the Court

The appeal is meritorious.

The State bears the burden of proving the elements of the illegal sale of dangerous drugs in violation of Section 5 of R.A. No. 9165 and of the illegal possession of dangerous drugs in violation of Section 11 of the same law. To discharge its burden of proof, the State should establish the *corpus delicti*, or the body of the crime itself. *Corpus delicti* is 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, the term means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two elements, 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 the act or result. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* if the subject drugs are missing, or if substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in the trial court.^[9]

In fine, the dangerous drug is itself the *corpus delicti*. The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his possession at the moment of arrest.^[10] The State must see to it that the custody of the seized drug subject of the illegal sale or of the illegal possession was safeguarded from the moment of confiscation until the moment of presentation in court by documenting the stages of such custody as to establish the chain of custody, whose objective is to remove unnecessary doubts about the identity of the incriminating evidence.^[11]

Section 21 of R.A. No. 9165,^[12] as amended, sets specific procedures in the handling of the confiscated substance, thusly:

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 conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That noncompliance of 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 and custody over said items;

x x x x

The *Implementing Rules and Regulation of Section 21 (a) of RA 9165*, as amended, (IRR) echoes the foregoing requirements, thus:

x x x x

(a) The apprehending office/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: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of