

FIRST DIVISION

[G.R. No. 227015, November 26, 2018]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
FATIMA TUMANGONG Y DIAZ, ACCUSED-APPELLANT.**

D E C I S I O N

DEL CASTILLO, J.:

This is an appeal filed by appellant Fatima Tumangong y Diaz from the February 24, 2016 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR H.C. No. 06438, which affirmed with modification the October 30, 2013 Decision^[2] of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case No. 17689-D, finding appellant guilty beyond reasonable doubt of violation of Section 5,^[3] Article II of Republic Act (RA) No. 9165.

Factual Antecedents

Appellant was charged with violation of Section 5, Article II of RA 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, in an Information^[4] which reads:

That on or about the 13th day of September 2011, in the City of Taguig, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully, and feloniously sell, deliver, and give away to a poseur[-]buyer zero point thirty (0.30) gram of Methylamphetamine Hydrochloride, a dangerous drug also known as "shabu", in violation of the above-cited law.

CONTRARY TO LAW.^[5]

When arraigned, appellant pleaded not guilty to the crime charged.^[6]

Version of the Prosecution

During the trial, the prosecution presented PO3 Jowel Briones (PO3 Briones) and PO1 Jerry Balbin (PO1 Balbin). Based on their testimonies and the documentary exhibits offered, the following facts emerged:

On September 13, 2011, at around 12:00 noon, a confidential informant reported to the office of the Station Anti-Illegal Drugs Special Operations Task Group (SAID-

SOTG) of the Taguig City Police Station that appellant was engaged in illegal drug activities along General Santos Avenue, Upper Bicutan, Taguig City. Acting on said information, the Chief of SAID-SOTG, PCINSP Mihilan Abu Payao (PCI Payao), formed a buy-bust team against appellant and designated PO3 Briones as poseur-buyer and PO1 Balbin as back-up.^[7] To that end, PO3 Briones was given two pieces of five hundred (PhP500.00) peso bills bearing serial nos. RG295459 and 2265979 as marked money.^[8] The bills were photocopied and recorded in the police blotter.^[9]

At around 4:00 o'clock of the same day, PCI Payao, PO3 Briones, PO1 Balbin, and the confidential informant proceeded to Upper Bicutan and conducted the operation.^[10] About 10 meters away from the target place, the informant pointed to a woman wearing *maong* pants and black shirt. She was standing in front of Landbank, General Santos Avenue Branch, and appeared to be waiting for possible customers. That woman was the appellant, the target of the operation.^[11] The confidential informant introduced PO3 Briones to appellant and convinced her that PO3 Briones was interested to buy one thousand pesos (PhP1,000.00) worth of *shabu*. Appellant told them to and left. After 30 minutes, appellant returned with a plastic sachet of *shabu*^[12] and asked that she be paid first.^[13] PO3 Briones thus gave the marked money to appellant who, in turn, handed over the plastic sachet of *shabu* to PO3 Briones. Thereafter, PO3 Briones scratched his head as the pre-arranged signal that the transaction had been consummated.^[14] PO1 Balbin then rushed to the scene and assisted in arresting appellant.^[15]

PO3 Briones and PO1 Balbin introduced themselves as police officers and informed appellant of the reason why she was being arrested, as well as of her constitutional rights.^[16] They tried to secure the presence of *barangay* officials but no *barangay* officials came even though they waited for an hour.^[17] They also tried to contact the Department of Justice (DOJ) but since it was already 5:00 o'clock in the afternoon, no representative from the DOJ came to the area of operation.^[18] PO3 Briones then inventoried the item seized and marked the plastic sachet of *shabu* with "JVB-09-13-11" at the place of arrest and in the presence of appellant, PCI Payao and PO1 Balbin.^[19]

The police officers then brought appellant to their headquarters, with PO3 Briones keeping custody of the item seized.^[20] At the police station, PO3 Briones turned over the plastic sachet of *shabu* to PO2 Alexander Saez (PO2 Saez) who was the duty investigator for documentation and investigation.^[21] PO3 Briones then accompanied PO2 Saez in bringing the seized item to the crime laboratory for examination.^[22]

The State dispensed with the testimony of Police Chief Inspector Richard Allan B. Mangalip (PCI Mangalip) because the parties agreed to stipulate on the following matters —

1. That Police Chief Inspector Richard Allan Mangalip is a member of the Philippine National Police and a qualified forensic chemist who conducted examination on the specimen submitted to his office to determine the

presence of methamphetamine hydrochloride;

2. That after examination of the specimen submitted, he prepared the Physical Science Report No. D 488-11S with the Findings that said specimen gave positive result to the test for methamphetamine hydrochloride and can identify said report and his signature;

3. Jurisdiction of the Court and identity of the accused as charged on the Information.^[23]

Version of the Defense

The defense presented appellant as its lone witness. Appellant denied the charge.

According to her, on September 13, 2011, at around 10:00 o'clock in the morning, she was inside her house washing dishes when six armed men in civilian clothes barged inside the house,^[24] introduced themselves as police officers,^[25] and asked about the whereabouts of a certain Arjay.^[26] When she said that she did not know that person, one of the men (PO3 Briones) slapped her on the face and forced her to point to the location of Arjay.^[27] The men then ransacked her house for about 20 minutes.^[28] When they failed to find whatever it was they were looking for, the men warned appellant to cooperate; otherwise, she would be brought to the police station. To this she replied: "why will you bring me with you, I am not the person you are looking for?"^[29] On hearing this reply, one PO1 Balbin handcuffed her and he and his fellow police officers brought her to the police station.^[30] During her interrogation, appellant denied ownership of the plastic sachet with two pieces of five hundred peso (Php500.00) bills placed on top of a table inside the police precinct.^[31]

Ruling of the Regional Trial Court

On October 30, 2013, the RTC of Pasig City, Branch 70, rendered its Decision finding appellant guilty beyond reasonable doubt of having violated Section 5, Article II of RA 9165 and sentenced her to life imprisonment and to pay a fine of Php300,000.00.

The RTC gave full credence to the testimonies of PO3 Briones and PO1 Balbin as they are presumed to have performed their duties regularly. The RTC rejected appellant's defense of denial for being inherently weak as compared to the positive testimonies of the prosecution witnesses.

Ruling of the Court of Appeals

On appeal, appellant contended that the prosecution failed to prove the integrity of the seized *shabu* because the apprehending officer did not comply with the procedure on the seizure and custody of drugs. In fine, she maintained that the prosecution failed to establish her guilt beyond reasonable doubt.

On February 24, 2016, the CA denied the appeal. It held that the elements of illegal sale of drugs had been duly established, to wit: (a) that appellant was the person who sold the *shabu* during the buy-bust operation; and (b) that appellant delivered the plastic sachet of *shabu* to the poseur-buyer, PO3 Briones, after the latter paid appellant the sum of Php1,000.00 as consideration for the sale of the prohibited drug. The CA likewise upheld the presumption of regularity in the performance of their duty when the police officers conducted the buy-bust operation. It then ruled that the positive assertions of these police officers prevailed over appellant's weak denial.

The CA also ruled that there was no break or irregularity in the chain of custody of the seized *shabu*. It declared that the prosecution was able to establish the seizure, the marking, and the inventory of the prohibited drug; that PO3 Briones transferred the custody of the seized item to the assigned investigator, PO2 Saez, who prepared the request for a laboratory examination of the seized item; that PO2 Saez delivered the seized item to the PNP Crime Laboratory, where it was received by PO2 Elmar Manuel (PO2 Manuel) and PCI Mangalip; and that PCI Mangalip conducted a laboratory examination on the seized item that yielded positive result for *shabu*, a prohibited drug. The CA held that although there was no strict compliance with the chain of custody requirements, the identity, integrity, and probative value of the seized *shabu* had been preserved by the police officers.

Unwilling to accept the CA's verdict, appellant instituted this present appeal. She argues in her Appellant's Brief^[32] that her guilt had not been proven beyond reasonable doubt because the prosecution failed to comply with the strict requirements of Section 21 of RA 9165 for the preservation of the seized item's evidentiary integrity under the Chain of Custody Rule.

Our Ruling

The appeal is meritorious.

For the conviction of illegal sale of drugs, the prosecution must prove: (1) the identity of the buyer and the seller of the subject drug; (2) the object and the consideration of the sale; and, (3) the delivery of the item sold and its payment. Further, it is crucial that the integrity of the seized drug be preserved; in this regard, the prosecution must prove an unbroken chain of custody over the subject illegal drug. This means that every link in the chain of custody, from the time of its confiscation until its presentation in court, must be clearly established.^[33]

After a careful examination of the records of the case, we find that the prosecution failed to establish an unbroken chain of custody of the seized drugs.

To ensure that the integrity and the evidentiary value of the seized items are preserved, the proper chain of custody of the seized items must be shown. Generally, there are four links in the said chain of custody: 1) the seizure and marking, if practicable, of the illegal drug confiscated from the accused by the apprehending officer; 2) the turnover of the seized drug by the apprehending officer to the investigating officer; 3) the turnover by the investigating officer of said item to the forensic chemist for examination; and 4) the turnover and submission thereof