

FIRST DIVISION

[G.R. No. 225634, June 07, 2017]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, V. ALLAN JAO Y CALONIA AND ROGELIO CATIGTIG Y COBIO, ACCUSED-APPELLANTS.

D E C I S I O N

PERLAS-BERNABE, J.:

Before the Court is an ordinary appeal^[1] filed by accused-appellants Allan Jao y Calonia (Jao) and Rogelio Catigtig y Cobio (Catigtig; collectively, accused-appellants) assailing the Decision^[2] dated October 28, 2015 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01393, which affirmed *in toto* the Joint Judgment^[3] dated August 25, 2011 of the Regional Trial Court of Dumaguete City, Branch 30 (RTC), convicting accused-appellants of the crimes of Illegal Delivery and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5^[4] and 11,^[5] Article II of Republic Act No. (RA) 9165,^[6] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The instant case stemmed from four (4) separate Amended Informations all dated September 23, 2008 charging accused-appellants of violations of Sections 5 and 11, Article II of RA 9165, to wit:

CRIMINAL CASE NO. 19189

That at about 6:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [Jao], did, then and there, willfully, unlawfully and feloniously, DELIVER AND GIVE AWAY to an informant of law enforcers, without authority by law, one (1) plastic sachet containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.01 gram, of which he was caught "in flagrante delicto."^[7]

CRIMINAL CASE NO. 19190

That at about 6:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [Jao], did then and there willfully, unlawfully and feloniously HAVE in his possession, custody and control, without authority by law, six (6) plastic sachets containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.06 gram which were confiscated as a result of a search incidental to an arrest.^[8]

CRIMINAL CASE NO. 19187

That at about 8:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused [Catigtig], did, then and there, willfully, unlawfully and feloniously, DELIVER AND GIVE AWAY to [a] law enforcer, without authority by law, ten (10) plastic sachets containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.10 gram, of which he was caught "in flagrante delicto."^[9]

CRIMINAL CASE NO. 19188

That at about 8:00 o'clock in the evening of June 2, 2008 at Barangay Maslog, Sibulan, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused [Catigtig], did, then and there willfully, unlawfully and feloniously HAVE in his possession, custody and control, without authority by law, ONE (1) plastic sachet containing methamphetamine hydrochloride, locally known as "*shabu*", weighing 0.06 gram, three (3) hand-rolled tinfoil and two (2) empty transparent plastic sachets which were confiscated as a result of a search incidental to an arrest.^[10]

On September 26, 2008, accused-appellants were arraigned but refused to enter a plea. Thus, a plea of "not guilty" was entered for all the charges against them.^[11]

The prosecution alleged that on June 2, 2008, a police team planned a buy-bust operation at Four Queens Motel located at Barangay Maslog, Sibulan, Negros Oriental, after an informant notified them that Jao was engaged in the sale of *shabu*. Pursuant to the plan, four police officers checked in at Room 6 of the motel at around 5:45 in the afternoon. Acting as poseur-buyer, the informant called Jao and ordered *shabu* worth P800.00 for delivery at Room 6 of the motel. He then waited outside the room for Jao to arrive. When the latter arrived, the informant asked for the *shabu* and Jao replied by taking a plastic sachet from his waistband and handing it over to the former. The informant then executed the pre-arranged signal, prompting the policemen to arrest Jao. Thereafter, the arresting policemen searched Jao and found six (6) more plastic sachets containing *shabu*. Special Investigator Marlon Manzanaris (SI Manzanaris) then marked the plastic sachets seized from Jao.^[12] However, when SI Manzanaris was about to prepare the inventory of the seized items, Jao suddenly and voluntarily informed the policemen that Catigtig was his source of contraband and agreed to cooperate for the latter's arrest. Special Agent Michael Dungog then instructed Jao to call Catigtig to order ten (10) more sachets of *shabu*, to which the latter agreed to deliver at around 8 o'clock that evening. Due to this development, the conduct of the inventory was suspended, and consequently, the policemen checked out of the motel and returned to their headquarters. During this time, SI Manzanaris retained custody of the items seized from Jao.^[13]

At around 7:30 in the evening, the policemen went back to the motel after Jao received a text message from Catigtig that he was already outside Room 6. Three (3) policemen then hid inside the bathroom, while Jao acted as an informant and Senior Police Officer 2 (SPO2) Allen Germodo (SPO2 Germodo) as the poseur-buyer. When Catigtig entered the room, Jao introduced SPO2 Germodo as the buyer of

shabu, thus, prompting Catigtig to hand over a Marlboro cigarette pack containing ten (10) plastic sachets of *shabu* to SPO2 Germodo, who in turn, said "*Okay na ni*," signifying that the transaction had already taken place. The other policemen then rushed into the scene, arrested Catigtig, and frisked him, resulting in the discovery of another sachet of *shabu*. SPO2 Germodo then marked the sachets seized from Catigtig, and thereafter, he and SI Manzanaris conducted a formal inventory of the items seized from both Jao and Catigtig in the presence of representatives from the media, the DOJ, and the barangay. While the inventory was on-going, Special Investigator Nicanor Tagle then took photographs of the seized items.^[14]

The accused-appellants were then taken to the NBI office for booking, while SI Manzanaris and SPO2 Germodo personally delivered the seized items in their respective custody to the Crime Laboratory. The seized items were received by PO1 Rex Tan (PO1 Tan), who in turn, handed them over to the Forensic Chemist, Police Chief Inspector (PCI) Josephine Llena (PCI Llena), who conducted a qualitative examination on the same. The examination revealed that the contents of the seized sachets from accused-appellants are indeed methamphetamine hydrochloride, or *shabu*.^[15]

In his defense, Jao denied the charges against him. He claimed that on the day of his arrest, he was working at his employer's house. At around 2 o'clock in the afternoon, he received a call asking him to go to the motel as there was a woman waiting for him there. When he arrived at the motel, men pointed their guns at him and mauled him inside the motel room. He also denied calling Catigtig, insisting that one of the police officers called the latter.^[16]

For his part, Catigtig likewise denied the accusations against him. He asserted that at about past 3 o'clock in the afternoon of June 2, 2008, Jao called and invited him to go to the motel to meet a woman. He initially declined but later on agreed. When Catigtig arrived at the motel, someone pointed a gun at him and dragged him inside the room where he was mauled. Catigtig admitted that an inventory was conducted in his presence but denied knowledge as to the source of the drugs placed on the table after his arrest.^[17]

The RTC Ruling

In a Joint Judgment^[18] dated August 25, 2011, the RTC found accused-appellants guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced them as follows: (a) for violation of Section 5, Article II of RA 9165, each accused-appellant was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of P500,000.00; and (b) for violation of Section 11, Article II of RA 9165, each accused-appellant was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day as minimum term to fourteen (14) years as maximum and to pay a fine in the amount of P400,000.00.^[19]

The RTC found the prosecution to have established that accused-appellants were validly arrested in a legitimate buy-bust operation, and that the searches made on them were likewise valid as they were made incidental to such arrests. On the other hand, it did not give credence to accused-appellants' defense of denial in light of the positive testimonies and the credible evidence against them. Further, the RTC upheld

the integrity and evidentiary value of the seized items as the policemen properly complied with the chain of custody rule.^[20]

Aggrieved, accused-appellants appealed to the CA.

The CA Proceedings

In a Decision^[21] dated October 28, 2015, the CA affirmed accused appellants' respective convictions *in toto*.^[22] It held that: (a) the prosecution had sufficiently established all the elements of illegal delivery and illegal possession of *shabu* against accused-appellants; (b) accused-appellants' arrests were made after legitimate buy-bust operations and not by instigation; and (c) there was no break in the chain of custody that would have compromised the integrity and evidentiary value of the seized items.^[23] Hence, the instant appeal.

Meanwhile and after accused-appellants filed their Notice of Appeal, the CA received a letter^[24] dated February 9, 2016 from the Bureau of Corrections, stating that Catigtig had already died on August 7, 2015.^[25] Thus, the CA issued a Resolution^[26] dated June 8, 2016 which, *inter alia*, referred the said letter to the Court for its consideration.

The Issue Before the Court

The core issue for the Court's resolution is whether or not accused-appellants are guilty beyond reasonable doubt of violations of Sections 5 and 11 of RA 9165.

The Court's Ruling

Jao's appeal must be denied, while the cases against Catigtig should be dismissed and declared closed and terminated.

I.

For a successful prosecution of the crime of Illegal Delivery of Dangerous Drugs, it must be proven that the accused passed on possession of a dangerous drug to another, personally or otherwise, and by any means; that such delivery is not authorized by law; and that the accused knowingly made the delivery. Worthy of note is that the delivery may be committed even without consideration.^[27] On the other hand, in the crime of Illegal Possession of Dangerous Drugs, the prosecution must prove that the accused is in possession of an item or object, which is identified as a prohibited drug; that such possession is not authorized by law; and that the accused freely and consciously possessed the drug.^[28]

In the instant case, both the RTC and the CA correctly found that the prosecution had established Jao's criminal liability for the aforesaid crimes, considering that: (a) Jao himself delivered a plastic sachet containing 0.01 gram of *shabu* to the informant during a legitimate buy-bust operation; and (b) upon his arrest, the arresting officers searched Jao and found six (6) more plastic sachets containing *shabu* with an aggregate weight of 0.06 gram. Similarly, both courts *a quo* found that there was no break in the chain of custody of the sachets seized from Jao as SI Manzanaris had sole possession of such sachets from the time of Jao's arrest until he turned them over to PO1 Tan, who in turn, handed it over to Forensic Chemist PCI Llena for qualitative examination. It is settled that "[f]actual findings of the RTC,