

THIRD DIVISION

[G.R. No. 213922, July 05, 2017]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROMMEL DIPUTADO, ACCUSED-APPELLANT.**

DECISION

TIJAM, J.:

Challenged in this appeal is the Decision^[1] dated December 16, 2010 of the Court of Appeals (CA) in CA-G.R. CEB-CR-HC No. 00968, which affirmed the Decision^[2] dated September 2, 2008 of the Regional Trial Court (RTC) of Iloilo City, Branch 36, in Criminal Case No. 06-62342 finding Rommel Diputado (accused-appellant) guilty beyond reasonable doubt 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 accusatory portion of the Information reads as follows:

That on or about the 7th day of March 2006, in the City of Iloilo, Philippines and within the jurisdiction of this Court, said accused, with deliberate intent and without any justifiable motive, did then and there willfully, unlawfully and criminally sell, distribute and deliver to a PNP poseur buyer one (1) heat-sealed transparent plastic packet containing 3.957 grams of methamphetamine hydrochloride (shabu), a dangerous drug, in consideration of twenty-four thousand pesos, without the authority to sell and distribute the same; that four (4) pieces of twenty-peso marked bills with Serial Numbers DV076150, DV811721, KW270225 and DT923404 which form part of the buy-bust money were recovered from the possession of the herein accused.

CONTRARY TO LAW.^[3]

Upon arraignment, accused-appellant pleaded not guilty to the charge. Thereafter, trial ensued.

The pertinent facts, as narrated by the RTC, are as follows:

A. Version of the Prosecution

On February 27, 2006, an asset of to [sic] the Office of the Regional Special Anti-Crime Task Force (RSAC-TF) of the Philippine National Police, Region 6 went to their Office and gave an information to P/Sr. Insp. Gallardo that a certain Rommel Diputado [sic] (the herein accused who was identified in Court), who was in the Watch List of said Task Force, is engaged in selling drugs in Brgy. San Vicente, Jaro, Iloilo City. Upon receipt of said information, Inspector Gallardo instructed PO1 Ronald

Estares and PO1 Ygan, both members of said Task Force, to conduct surveillance and test buy on the accused. Accordingly, PO1 Estares and PO1 Ygan together with the asset, who gave the information, conducted a test buy on the accused on March 3, 2006 in Brgy. San Jose, Malo, Iloilo City. During the test buy, they were able to purchase suspected shabu from the accused worth P500.00 and when they returned to their Office, P/Sr. Inspector Gallardo instructed them to conduct a buy-bust operation. Thus, on the morning of March 7, 2006, P/Sr. Inspector Gallardo conducted a briefing wherein PO1 Estares was designated to be the poseur-buyer with PO1 Lord Ambrocio as his buddy who will give a support. Also, during the briefing, P/Sr. Inspector Gallardo gave to PO1 Estares a buy-bust money amounting to P24,000.00 consisting of five Twenty Peso bills, four of which were authenticated at the Iloilo City Prosecution Office, and the others were fake money in different denominations. Moreover, PO1 Estares and PO1 Ambrocio were informed that the buy-bust operation will be conducted at around 1:00 o'clock in the afternoon in Brgy. San Vicente, Jaro, Iloilo City where they will meet their asset who was used during the test-buy and that the group of P/Sr. Inspector Gallardo will also serve as back-up.

Then, at around 10:00 o'clock in the morning of the same day, PO1 Estares and Ambrocio proceeded to Brgy. San Vicente, Jaro, Iloilo City and upon arrival thereat, they positioned themselves at a billiard hall and an eatery where they waited for their asset. After about one and a half hour[s], the asset arrived at the area and said asset informed PO1 Estares to wait for the accused. By 12:45 noontime, the accused arrived and as such, PO1 Estares transacted with accused at the corner of the street for the purchase of shabu worth P24,000.00. During the transaction, the accused told PO1 Estares and PO1 Ambrocio to just wait and then said accused left the place. After a while, the accused arrived and alighted from a taxi, approached PO1 Estares and PO1 Ambrocio and then he asked for the money. Accordingly, PO1 Estares handed to the accused their buy-bust money which accused placed inside his pocket and then, he handed to PO1 Estares a big sachet containing white crystalline substance. At that point, PO1 Estares and PO1 Ambrocio introduced themselves as police officers and they immediately frisked the accused which resulted to the recovery of the buy-bust money by PO1 Estares: Thereafter, the group of P/Sr. Inspector Gallardo, who was "miss called" [sic] by PO1 Ambrocio, arrived at the scene of the incident and they brought the accused to the house of the barangay captain about 100 meters away together with the item subject of the buy-bust.

At the house of the barangay captain, the subject item and the buy-bust money were recorded/listed by PO2 Lucilo Mayores in a document which was signed by the barangay kagawads and media representative. After the recording, the items were gathered by PO1 Estares who brought them to their Office where he marked the plastic sachet with white crystalline substance with RDM, the initial of the accused. Then, PO1 Estares turned over the listed items to PO1 Alfredo Tilano, the Exhibit Custodian of RSAC-TF. Thereafter, the items were brought to the Iloilo City Prosecution Office where they were inventoried before Prosecutor Elvas and in the presence of a barangay kagawad and media

representative who also signed the document relative thereto. After the inventory, the plastic sachet with white crystalline substance was submitted to the PNP Crime Laboratory for examination.

x x x x

B. Version of the Defense

At around 1:00 o'clock on the afternoon of March 7, 2005 (sic) after accused has taken lunch in his house in Brgy. North San Jose, Molo, Iloilo City, he rode in a taxi in order to go to Brgy. Tabuc-Suba, Jaro, Iloilo City as he was requested by a friend to butcher a pig. Unfortunately, on the way to his friend and while passing Brgy. San Vicente, Jaro, the taxi ridden by accused was blocked by three persons, one of whom went to the door of the taxi and greeted the accused. Then, said person brought the accused at the back of the taxi and after a while, said accused was brought by the persons to the house of the Barangay Captain of Brgy. San Vicente, about one hundred meters away. At the house of the Barangay Captain, accused was surprised when the three persons presented money and shabu to the Barangay Captain and he was directed to point at the said items. Initially, he refused to point at the items but eventually he pointed at the items and at that point, he was photographed with the use of a cellphone. Thereafter, accused was brought to the Hall of Justice.^[4]

On September 2, 2008, the RTC found^[5] the accused-appellant guilty beyond reasonable doubt for illegal selling of dangerous drugs, to wit:

WHEREFORE, judgment is hereby rendered finding accused Rommel Diputado y Montefolka GUILTY beyond reasonable doubt of Violation of Section 5, Article II of Republic Act No. 9165 and sentencing him to suffer the penalty of life imprisonment and to pay the fine of Five Hundred Thousand (P500,000.00) Pesos.

The plastic sachet of shabu (Exhibit "H-1") and its container subject of the criminal case is [sic] confiscated in favor of the government and the OIC Branch Clerk of Court is directed to turn over said item to the Philippine Drug Enforcement Agency, Region 6 for proper disposition pursuant to existing rules and regulations.

On the other hand, the five (5) pieces of Twenty Peso bills (Exhibits "I" to "I-4") including the fake money amounting to P23,900.00 (Exhibit "I-5") is ordered to be returned to the Regional Special Anti Crime Task Force of the Philippine National Police.

SO ORDERED.^[6]

The CA, in its Decision^[7] dated December 16, 2010, affirmed *in toto* the ruling of the RTC, thus:

WHEREFORE, in view of all the foregoing considerations, the September 2, 2008 Decision of the Regional Trial Court, Branch 36, Iloilo City and its

Order dated October 30, 2008, is hereby **AFFIRMED**.

SO ORDERED.^[8]

Hence, this appeal with accused-appellant raising the following issue in his Supplemental Brief:^[9]

WHETHER OR NOT THE TRIAL COURT AND THE COURT OF APPEALS BOTH ERRED IN FINDING THAT THE EVIDENCE OF THE PROSECUTION WAS SUFFICIENT TO CONVICT THE ACCUSED OF THE ALLEGED SALE OF METHAMPHETAMINE HYDROCHLORIDE, IN VIOLATION OF SECTION 5 OF R.A. [NO.] 9165.^[10]

Accused-appellant claims that the seized illegal drug was not marked immediately after his arrest at the scene of the crime, neither was it marked at the house of the barangay captain where the seized illegal drug and the buy-bust money were allegedly initially recorded/listed by PO1 Lucilo Mayores (PO1 Mayores). The seized illegal drug was only marked at the office of the Regional Special Anti-Crime Task Force (RSAC-TF) by PO1 Ronald Estares (PO1 Estares) with the initial "RDM." Accused-appellant further argues that there was no evidence on record that photographs were taken during the inventory of the seized items. Another break in the chain of custody, according to the accused-appellant, was the failure of the prosecution to present PO3 Allen Holleza (PO3 Holleza), the person who allegedly received the Request for Laboratory Examination.^[11] The non-presentation of PO3 Holleza was fatal to the prosecution's case considering that there is an additional marking, *i.e.*, "RGE", on the plastic sachet which was not mentioned in any document presented by the prosecution nor was it explained by PO1 Estares, PO1 Mayores and PO1 Alfredo Tilano (PO1 Tilano). Thus, the procedural lapses or the gaps in the chain of custody of the illegal drug and the failure of the police officers to offer a justifiable reason for their non-compliance with the requirements of Section 21 of R.A. No. 9165, create a reasonable doubt as to the integrity and evidentiary value of the seized illegal drug.

The appeal is meritorious.

At the outset, appeal in criminal cases throws the whole open for review and it is the duty of the appellate court to correct, cite and appreciate errors in the appealed judgment whether they are assigned or unassigned.^[12] After a careful review and scrutiny of the records, We hold that the prosecution failed to preserve the integrity and evidentiary value of the seized dangerous drugs. As such, the acquittal of the accused-appellant comes in a matter of course.

In a successful prosecution for illegal sale of dangerous drugs, like *shabu*, the following elements must be established: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti*.^[13] It is however not enough that the prosecution merely establish the elements of the crime of illegal sale of dangerous drugs. It is well-settled that in the prosecution of cases involving the illegal sale or illegal possession of dangerous drugs, the evidence of the *corpus delicti* which is the

dangerous drug itself, must be independently established beyond reasonable doubt.
[14]

The duty of the prosecution is not merely to present in evidence the seized illegal drugs. It is essential that the illegal drugs seized from the suspect is the very same substance offered in evidence in court as the identity of the drug must be established with the same unwavering exactitude as that required to make a finding of guilt.^[15] The identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. This requirement necessarily arises from the illegal drug's unique characteristic that renders it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.^[16]

To remove any doubt or uncertainty on the identity and integrity of the seized drug, evidence must definitely show that the illegal drug presented in court is the same illegal drug actually recovered from the accused-appellant.^[17] Thus, Section 21 of R.A. No 9165 provides for the procedure that ensures that what was confiscated is the one presented in court, to wit:

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 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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall