

THIRD DIVISION

[G.R. No. 180586, November 20, 2017]

**ARNELIO B. CALMA, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

DECISION

MARTIRES, J.:

This is a Petition for Review under Rule 45 of the Rules of Court, seeking to reverse and set aside the 28 September 2007 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR No. 27659, which affirmed the 17 June 2003 Decision^[2] of the Regional Trial Court, Branch 27, Bayombong, Nueva Vizcaya (RTC), in Criminal Case No. 4133, finding petitioner Amelio B. Calma (*Calma*) guilty beyond reasonable doubt of the crime of illegal sale of prohibited drugs.

THE FACTS

Calma was indicted under an Information, dated 12 March 2002, with violation of Section 15, Article III of Republic Act (R.A.) No. 6425 otherwise known as "The Dangerous Drugs Act of 1972," as amended, the accusatory portion of which reads:

That on or about March 6, 2002 in the afternoon, in Barangay Quirino, Municipality of Solano, Province of Nueva Vizcaya, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, caught in flagrante delicto, did then and there willfully, unlawfully and feloniously possess, sell, administer, deliver and give away to law enforcement agents who posed as buyers point eight (.8) gram of methamphetamine hydrochloride (shabu), more or less, contained in two (2) heat-sealed transparent plastic sachets, which is a regulated drug, to the damage and prejudice of the Republic of the Philippines.^[3]

When arraigned, Calma, who was then duly assisted by counsel, entered a plea of "Not Guilty."^[4]

Evidence for the Prosecution

The prosecution presented four (4) witnesses, namely: Police Officer (PO) 2 Arnel Padilla (*PO2 Padilla*), who acted as the poseur-buyer; PO1 Erwin Bautista (*PO1 Bautista*), a member of the buy-bust team; Senior Police Officer 3 Romulo Labiano (*SPO3 Labiano*), the on-duty investigator at the police station of Solano, Nueva Vizcaya; and Police Inspector Mayra M. Madria (*PI Madria*), the Forensic Chemist. Their combined testimonies tended to establish the following:

On 6 March 2002, at around 5:00 o'clock in the afternoon, while Police Senior Inspector Corazon Valencia (*PSI Valencia*), PO1 Bautista, SPO4 Luisito Lannu (*SPO4*

Lannu), and PO2 Padilla were at the Solano police station, PSI Valencia received a call from a female informant regarding a drug deal which was about to take place in front of the Yellow Lemon Beauty Salon (*Yellow Lemon*) at Yogad Street, Quirino, Solano. Upon the instruction of PSI Valencia, the female informant went to the Solano police station where she discussed the alleged drug deal involving Calma.^[5]

Thereafter, a buy-bust team was formed composed of SPO4 Lannu, PO1 Bautista, PO2 Padilla, and a certain PO1 Flores. The informant then called Calma through a cellphone and arranged a deal with him for the sale of shabu. They agreed to meet in front of Yellow Lemon. PO2 Padilla prepared and photocopied a P1,000.00 bill (Exhibit "G")^[6] to be used as the marked money.^[7] The buy-bust team immediately proceeded to the target area and waited for the arrival of Calma. The team members positioned themselves near PO2 Padilla, who agreed to act as the poseur-buyer.^[8]

At about 5:40 p.m., Calma arrived in front of Yellow Lemon where he met PO2 Padilla who introduced himself as the buyer mentioned by the informant. Calma asked PO2 Padilla how much shabu he wanted to buy; the latter replied that he wanted to buy shabu worth P1,000.00. Calma handed PO2 Padilla a sachet containing white crystalline substances (Exhibit "A-1").^[9] PO2 Padilla, in turn, handed Calma the P1,000.00 bill.^[10]

Right after the exchange, PO2 Padilla introduced himself as a police officer. Calma tried to run but his path was blocked by the members of the buy-bust team who apprehended him. The police officers took Calma's cellphone, searched his motorcycle, and found a wallet underneath the driver's seat. Upon examining the wallet, they discovered another sachet containing a white crystalline substances (Exhibit "A-2")^[11] inside the wallet. PO2 Padilla also retrieved the P1,000.00 bill from Calma. Thereafter, the buy-bust team brought Calma to the Solano police station where he was handed over to SPO3 Labiano together with the confiscated cellphone, motorcycle, and the two sachets containing white crystalline substances.^[12]

The two sachets were then submitted to the PNP Crime Laboratory for examination. In Chemistry Report No. D-14-2002 (Exhibit "F"),^[13] the crime laboratory revealed that the white crystalline substances contained in the two sachets yielded positive results for methamphetamine hydrochloride or shabu and had a total weight of 0.23 grams.

Evidence for the Defense^[14]

The defense presented Calma and Amy De Guzman (De Guzman), a beautician at Yellow Lemon, as witnesses. Their combined testimonies tended to establish Calma's innocence, as follows:

On 6 March 2002, at around 5:00 o'clock in the afternoon, Calma left his residence aboard a motorcycle and proceeded to Yellow Lemon to have his hair cut. Upon arrival he noticed that the beauticians were busy so he went out of the salon and proceeded to his motorcycle intending to leave.

After starting his engine, two (2) men blocked his path, one of whom brought out a gun, but he ignored them and started to move his motorcycle but the men were able to hold on to its handles. He stood up, ran, and entered Yellow Lemon. The two persons chased after him and eventually got hold of him. At this juncture, SPO4 Lannu, whom Calma recognized, arrived and told him to go with them to the police station. He was handcuffed, boarded on a tricycle, and brought to the Solano police station.

The following morning, Calma was subjected to drug testing which yielded negative results for the presence of any dangerous or prohibited drug. Nevertheless, Calma was brought to the Office of the Provincial Prosecutor of Nueva Vizcaya and subsequently charged with violation of Section 15, Article III of R.A. No. 6425, as amended.

The RTC Ruling

In its 17 June 2003 Decision, the RTC found Calma guilty of violating Section 15, Article III of R.A. No. 6425, as amended, the dispositive portion of which reads:

WHEREFORE, finding accused Amelio Calma y Buenviaje GUILTY beyond reasonable doubt of illegally selling shabu, he is hereby sentenced to suffer the penalty of imprisonment of 4 months and 1 day of *arresto mayor* as the minimum term to 4 years and 2 months of *prision correccional* as the maximum term. Costs against the accused.^[15]

Aggrieved, Calma elevated an appeal before the CA.

The CA Ruling

In its assailed decision, the CA affirmed the RTC decision, with the dispositive portion of the CA decision as follows:

WHEREFORE, in view of the foregoing, the appealed decision dated June 17, 2003 of the Regional Trial Court, Bayombong, Nueva Vizcaya, Branch 27 in Criminal Case No. 4133 is hereby AFFIRMED.^[16]

Hence, this appeal.

ISSUES

I.

WHETHER THE TOTALITY OF THE EVIDENCE PRESENTED MEETS THE REQUIRED PROOF BEYOND REASONABLE DOUBT AS WOULD OVERCOME THE PRESUMPTION OF INNOCENCE OF THE ACCUSED.

II.

WHETHER THE MOTORCYCLE AND CELLULAR PHONE MAY BE CONSIDERED FORFEITED IN FAVOR OF THE GOVERNMENT DESPITE THE ABSENCE OF A RULING TO THAT EFFECT IN THE APPEALED DECISION.^[17]

THE COURT'S RULING

We grant the petition.

Inconsistency not affecting the elements of the crime cannot be ground for acquittal.

Insisting on his acquittal, Calma argued that the prosecution failed to clearly and adequately show the details surrounding the purported transaction which was the subject matter of the buy-bust operation. He pointed out that the prosecution witnesses were inconsistent, and in fact even contradicted each other, as to who organized and who were the members of the buy-bust team, who prepared and photocopied the marked money used in the operation, and how the search on the motorcycle was conducted.

This argument fails to persuade.

The apparent inconsistencies cited by Calma are immaterial for the prosecution of this case as they do not touch on the essential elements of the crime charged. An inconsistency which has nothing to do with the elements of the crime cannot be a ground for the acquittal of the accused.^[18] It is an elementary rule in this jurisdiction that inconsistencies in the testimonies of prosecution witnesses with respect to minor details and collateral matters do not affect the substance of their declaration nor the veracity or weight of their testimony. In fact, these minor inconsistencies enhance the credibility of the witnesses, for they remove any suspicion that their testimonies were contrived or rehearsed.^[19]

Jurisprudence is replete with pronouncements that the essential elements of the crime of illegal sale of regulated or prohibited drugs, and which should be satisfactorily proven to secure a conviction, are as follows: (1) the identity of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.^[20] What is material, therefore, is proof that the accused peddled illicit drugs, coupled with the presentation in court of the *corpus delicti*.^[21]

The details concerning the organization of the buy-bust team, preparation of the marked money, and conduct of the search are immaterial to the prosecution of the crime under Section 15, Article III of R.A. No. 6425. Inconsistencies and discrepancies in the testimonies regarding such would not result in the rendering of a decision favorable to Calma.

Be that as it may, the Court is convinced that the prosecution failed to establish Calma's guilt by proof beyond reasonable doubt.

The prosecution failed to prove Calma's guilt by proof beyond reasonable doubt; chain of custody was not established.

As previously discussed, in prosecutions under the law on dangerous drugs, the illegal drug seized from the accused constitutes the *corpus delicti* of the offense.^[22] As such, it is indispensable that the substance confiscated from the accused be the very same substance offered in court. For this purpose, the Court has adopted the chain of custody rule, a method of authenticating evidence which requires that the

admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be.^[23]

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.^[24]

Marking after seizure is the starting point in the custodial link, thus it is vital that the seized contraband is immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed at the end of criminal proceedings, obviating switching, "planting," or contamination of evidence.^[25] To ensure that they are the same items that enter the chain and are eventually the ones offered in evidence, the marking of the seized items should be done in the presence of the apprehended violator and immediately upon confiscation of the said items.^[26]

After a thorough evaluation of the records in this case, the Court finds that the prosecution failed to prove beyond reasonable doubt the identity of the dangerous drug, and the chain of custody was not established with moral certainty.

Evident from the records is the failure of the buy-bust team to observe the first step which is crucial to establish the chain of custody. This serious blunder can be gleaned from the testimony of PO2 Padilla when he took the witness stand, thus:

PROS. TURINGAN:

Q. After you turned over the items you confiscated from the accused to the investigator including the 2 sachets of shabu, what did the investigator do with respect to the 2 sachets of shabu?

A. He put his initial, sir.

Q. By the way, what is the name of the investigator?

A. SPO3 Romulo Labiano, sir.

Q. What initial did he place on the sachets of shabu?

A. R.E.L., sir.^[27]

Furthermore, during his cross-examination, PO2 Padilla testified as follows:

ATTY. DACAYO:

Q. What happened next when they saw this shabu inside this motorcycle?

A. They put a marking, sir.