

THIRD DIVISION

[G.R. No. 206766, April 06, 2016]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
EDUARDO YEPES, ACCUSED-APPELLANT.**

DECISION

PEREZ, J.:

Before us for review is the Decision^[1] of the Court of Appeals in CA-G.R. CEB CR HC No. 01007 dated 21 September 2012, which dismissed the appeal of accused-appellant Eduardo Yepes and affirmed with modification the Judgment^[2] of the Regional Trial Court (RTC), Branch 28 of Catbalogan City in Criminal Case Nos. 6125-6126 finding accused-appellant guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, to wit:

That on or about the 29th day of July 2004, at about 6:20 o'clock in the evening, more or less, at vicinity of Purok 6, Barangay Guindapunan, Municipality of Catbalogan, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent to gain and without being authorized by law, did, then and there, wilfully, unlawfully and feloniously sell and hand over One (1) Heat sealed transparent plastic bag containing white crystalline substance called methylamphetaminic Hydrochloride locally known as "shabu", a dangerous drug, having the following marking and net weight, to wit: "A-1-("JFI-1")-0.03 gram", as per Chemistry Report No. D-276-2004, to PO1 Ervin A. Ariño who acted as poseur-buyer in a "buy-bust" operation conducted by the Samar Provincial Police Office (PPO) of Catbalogan, Samar, as evidenced by the Two (2) pieces of One Hundred Pesos Bills (P100.00) marked money with Serial Numbers RN535127 and QJ837907, respectively.^[3]

At his arraignment, accused-appellant, pleaded not guilty. Trial ensued.

The prosecution presented as witnesses Police Officer 2 Ervin Anno (PO2 Ariño), Police Senior Inspector Benjamin Aguirre Cruto (P/S Insp. Cruto) PO2 Roy Lapura (PO2 Lapura), Senior Police Officer 4 Romy dela Cruz (SPO4 dela Cruz), PO3 Nelson Lapeciros (PO3 Lapeciros) and PO3 Jay Ilagan (PO3 Ilagan).

PO2 Ariño testified that on 29 July 2004, at around 6:20 in the evening, he was with PO2 Lapura and PO2 Arthur Perdiso (PO2 Perdiso) at Purok 6, *Barangay* Guindapunan, Catbalogan City to conduct a buy-bust operation on a person yet to

be identified and accompanied by their police asset. The operation had been authorized by Police Inspector Carlos G. Vencio in the afternoon of the same day. The police asset whose name PO2 Ariño failed to remember on the witness stand, arrived in a motorcycle with accused-appellant as passenger. PO2 Ariño, as *poseur* buyer, then asked accused-appellant if he had some stuff and the latter nodded. PO2 Ariño gave him two (2) One Hundred Peso (P100.00) bills in exchange for a small sachet of what PO2 Ariño believed to be *shabu* based on its appearance. PO2 Ariño removed his cap to signal the consummation of the operation to his companions who had been hiding behind a concrete wall about 5-6 meters away. When his companions arrived and arrested accused-appellant, PO2 Ariño headed for the police station to report the outcome of the operation. Thereat, he surrendered the plastic sachet to PO3 Ilagan.^[4]

PO2 Lapura confirmed that they had not been informed about the identity of the suspect before the buy-bust operation and that the police asset was to identify him for them. During the buy-bust operation, PO2 Lapura together with PO2 Perdiso and SPO4 dela Cruz been stationed more or less ten (10) meters from the location of the alleged buy-bust operation. PO2 Lapura saw accused-appellant and PO2 Ariño hand one another something and when the latter executed the pre-arranged signal, PO2 Lapura and PO2 Perdiso approached them. PO2 Lapura informed the accused-appellant of his constitutional rights and conducted a body search on the latter which yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (P100.00) bills. PO2 Lapura subsequently handed the sachets to SPO4 dela Cruz who had remained at their original location and the bills to PO3 Ilagan at the police station. On cross-examination, PO2 Lapura stated that from his vantage point, he could not see the plastic sachet but merely saw accused-appellant hand PO2 Ariño something. He also stated that he cannot ascertain whether it was *shabu* due to the distance.^[5]

SPO4 dela Cruz narrated that he had been waiting at the *barangay* hall when the buy-bust team together with accused-appellant passed by *en route* to the police station. PO2 Ariño handed him three (3) sachets. SPO4 dela Cruz proceeded to examine the contents of one of the sachets. His conclusion that the same was *shabu* is embodied in a Certification of Drug Field Test dated 29 July 2004.^[6]

PO3 Ilagan, as evidence custodian, testified that three (3) sachets of *shabu* had been surrendered to him at the police station by officers PO2 Ariño and Lapura. He marked the evidence as "JFI" and submitted them to the Philippine Drug Enforcement Agency (PDEA) for examination.^[7]

PO3 Lapeciros stated that he had photocopied five (5) pieces of One Hundred Peso (P100.00) bills and had them subscribed by the Office of the Clerk of Court for use in buy-bust operations.^[8]

P/S Insp. Cruto testified that he had conducted a physical examination of the substance alleged to be *shabu*.^[9] His positive findings are encapsulated in Chemistry Report No. D-276-2004.^[10]

Accused-appellant testified on his behalf and vehemently denied the indictment. He narrated that on the date of the alleged buy-bust operation, he had just come from

the public cemetery and was walking to the town proper when a person named Lagrimas, known to be a police asset, came around driving a motorcycle. Lagrimas requested accused-appellant to ride with him in his motorcycle and he acceded. Near the grandstand in *Barangay* Guindapunan, Lagrimas parked the motorcycle with several police officers, more than ten (10) of them, within distance. The police officers approached them and handcuffed accused-appellant. Lagrimas pulled out *shabu* from his shirt, gave it to one of the police officers who attempted to put it inside accused-appellant's pocket which the latter was able to resist. The police officers brought accused-appellant to the police station and there was shown the sachet of *shabu* but he denied any charges. The police officers told him "here, so that you can go free, because according to you, you have not committed any crime, here is Two Hundred (P200.00) Pesos marked money, go to Guinsorongan, buy this 'shabu', to whoever you will give the money, that is the one we will apprehend." When accused-appellant refused the request, he was placed inside the detention cell.^[11]

On 19 December 2008, the RTC rendered judgment finding accused-appellant guilty of illegal sale of a dangerous drug. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, this Court hereby sentences the accused **EDUARDO YEPES Y CINCO**, beyond reasonable doubt for Violation of Section 5 of R.A. No. 9165 and, thus, punishes him to suffer a penalty of life imprisonment to death and to pay a fine of Five Hundred Thousand Pesos (P500,000.00). But however, acquits the accused of illegal possession of *shabu* under Section 11 of R.A. No. 9165.

Mr. Victor Templonuevo, OIC, Provincial Warden, is hereby directed to deliver the living body of accused Yepes to Abuyog Penal Colony immediately upon receipt of this judgment, unless otherwise, detained for some other causes. With *cost de officio*.^[12]

Accused-appellant moved for a reconsideration and re-opening of the case, tendering a joint affidavit executed by four (4) affiants stating that no buy-bust operation took place on 29 July 2004, and that about the time of the alleged operation, accused-appellant was working at another place and that, the latter is of good moral character and enjoys good standing in their community.^[13] This the RTC denied.^[14]

Accused-appellant filed a Notice of Appeal on 18 February 2009.^[15] On 21 September 2012, the Court of Appeals rendered the assailed judgment affirming with modification the trial court's decision. The Court of Appeals found accused-appellant guilty of the crime charged, or violation of Section 5, Article II of R.A. 9165.

Accused-appellant appealed his conviction before this Court. In a Resolution^[16] dated 08 July 2013, accused-appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties manifested that they will no longer file supplemental briefs as their arguments in their respective briefs are already sufficient.^[17]

Accused-appellant asserts that the *shabu* was planted by the police officers and that there was no sufficient proof that the prosecution witnesses had indeed seen him sell *shabu*. In addition, the police officers failed to observe the proper procedure in the handling, custody and disposition of the seized drug.

The Court finds merit in the appeal.

The RTC anchored accused-appellant's conviction fundamentally on the testimonial evidence of the prosecution. The RTC brushed aside accused-appellant's defense of denial ruling that his evidence failed to overturn the presumption of regularity in the performance of official duties on the part of the police officers. Similarly, the Court of Appeals affirmed the judgment of the RTC, also lending greater credence to the testimonial evidence of the prosecution. According to the Court of Appeals, said evidence was found to have sufficiently established the elements of the crime charged, as well as the fact of preservation of the integrity and evidentiary value of the drug specimens seized. The appellate court also upheld the presumption of regularity in favor of the police officers.

The Court reviewed the records of the instant case and saw a different story. The police officers had indeed committed serious lapses in procedure in the conduct of the buy-bust operation on 29 July 2004. The Court also finds that the evidence for the prosecution falls short of the exacting degree of proof beyond reasonable doubt required under our criminal laws.

Generally, the trial court's findings of fact, especially when affirmed by the Court of Appeals, are entitled to great weight and will not be disturbed on appeal. This rule, however, admits of exceptions and does not apply where facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied as in the case at bar.^[18]

To secure a conviction for illegal sale of *shabu*, the following elements must be present: (a) the identities of the buyer and the seller, the object of the sale and the consideration; and (b) the delivery of the thing sold and the payment for the thing. It is material to establish that the transaction or sale actually took place, and to bring to the court the *corpus delicti* as evidence.^[19] Proof beyond, reasonable doubt in criminal prosecutions for the sale of illegal drugs demands that unwavering exactitude be observed in establishing the *corpus delicti*, the body of crime whose core is the confiscated illicit drug.^[20]

The reason for this the Court elucidated in *People v. Tan*,^[21] to wit:

[B]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heron can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Thus, the courts have been exhorted to be extra vigilant in trying drug cases lest an innocent person is made to suffer the unusually severe penalties for drug offenses. Needless to state, the lower court should have exercised the utmost diligence and prudence in deliberating upon accused-appellants guilt. It should have given more serious consideration

to the *pros* and *cons* of the evidence offered by both the defense and the State and many loose ends should have been settled by the trial court in determining the merits of the present case.

The Court carefully examined the pieces of evidence on record, read the testimonies of the witnesses for the prosecution and the defense, and noted the following material points:

1. Only the police asset/informant and PO2 Ariño had personal knowledge of the buy-bust operation, if at all one was clone. Interestingly, the prosecution never presented the police asset. Neither had any statement been taken from him which was material considering that he was the lone source of information regarding accused-appellant's supposed illegal activities. It is noteworthy that the identity of the accused-appellant had not been known to any of the participants of the buy-bust team and that he could only be identified through the police asset. It is also remarkable that PO2 Ariño could not remember the police asset's name on the witness stand. No surveillance was conducted to identify the alleged drug-pusher who would be the subject of the entrapment. There was even no evidence regarding the dependability or reliability of the police asset.
2. PO2 Ariño testified that immediately after his companions apprehended accused-appellant, he went back to the police station to report the incident and hand over **one (1)** plastic sachet to PO3 Ilagan. His actuations were not according to procedure. PO2 Ariño left the scene shortly. There was no mention that he marked the sachet, nor that he took photographs and made an inventory of the same. PO2 Ariño stated that he had the sachet marked but could not recall its marking. Most importantly, PO2 Ariño stated that he surrendered only **one (1)** sachet and that he surrendered the same to **PO3 Ilagan**.
3. PO2 Lapura was positioned with SPO4 dela Cruz and PO2 Perdiso some ten (10) meters away from the location of the buy-bust operation. He admitted that he merely observed the gestures of the PO2 Ariño and accused-appellant and that he could not ascertain from his vantage point whether the plastic sachet indeed contained *shabu*. PO2 Lapura also testified that his body search on accused-appellant yielded two (2) small plastic sachets and two (2) pieces of One Hundred Peso (P100.00) bills. PO2 Lapura handed the **sachets to SPO4 dela Cruz** who had remained at their original post and the **bills to PO3 Ilagan at the police station**.
4. SPO4 dela Cruz did not witness the buy-bust operation as **he had waited at the barangay hall**. There, PO2 Ariño allegedly handed him **three (3) sachets**. He opened one (1) sachet, **tasted it and concluded that the same and the other two (2) sachets all contained shabu**.
5. PO3 Ilagan testified that, as evidence custodian, **three (3) sachets of shabu** had been surrendered to him at the police station by **officers PO2 Ariño and Lapura**. He marked the evidence as "JFI" and submitted them to PDEA for examination. There was no mention whether the marking had been made in the presence of accused-appellant.