

## SECOND DIVISION

[ G.R. No. 195245, February 16, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JIMMY GABUYA Y ADLAWAN, ACCUSED-APPELLANT.**

### RESOLUTION

**DEL CASTILLO, J.:**

In this appeal, Jimmy Gabuya y Adlawan (appellant) assails the May 19, 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01795 which affirmed the December 8, 2005 Joint Decision<sup>[2]</sup> of the Regional Trial Court (RTC), Branch 127, Caloocan City in Criminal Cases Nos. C-68369 and C-68370, finding him guilty beyond reasonable doubt of violation of Sections 5 (sale of dangerous drugs) and 11 (possession of dangerous drugs), Article II of Republic Act No. 9165<sup>[3]</sup> (R.A. 9165) and sentencing him to suffer the penalties of life imprisonment and to pay a fine of P500,000.00 for illegal sale, and twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay a fine of P300,000.00 for illegal possession, with subsidiary imprisonment in the event of insolvency in both cases.

#### ***Factual Antecedents***

PO1 Joel Rosales (PO1 Rosales) relayed to Police Inspector Cesar Cruz (P/Insp. Cruz) the information he received from a confidential informant that appellant was selling illegal drugs on Second Avenue, Caloocan City. Thus, P/Insp. Cruz formed a buy-bust team and dusted a P100.00 bill with ultraviolet fluorescent powder to be used as marked money. He designated PO1 Rosales as poseur-buyer while the other members, consisting of PO3 Manuel De Guzman (PO3 De Guzman), PO3 Rodrigo Antonio, PO3 Ferdinand Modina and PO2 Amadeo Tayag, would serve as back-ups. When the team arrived at the designated area, PO1 Rosales and the confidential informant went ahead while the rest of the buy-bust team positioned themselves in strategic locations. The confidential informant left after pointing appellant to PO1 Rosales. PO1 Rosales then approached appellant and told him that he wanted to buy illegal drugs worth P100.00. He then showed appellant the P100.00 marked money who took the same and placed it in his pocket. Thereafter, appellant retrieved from another pocket three plastic sachets containing white crystalline substance and gave one to PO1 Rosales, who thereupon scratched his head as the pre-arranged signal to the buy-bust team that the illegal drug transaction had already been consummated. When the back-ups arrived, PO1 Rosales informed appellant that he is a police officer and immediately caused his arrest. He then confiscated the other two plastic sachets from appellant while PO3 De Guzman recovered the marked money after appellant emptied his pocket.<sup>[4]</sup>

Appellant, together with the marked money and the specimens recovered from him, were turned-over to the police investigator, PO3 Randolph Hipolito, who marked each

sachet with the letters JGA, the initials of appellant.<sup>[5]</sup> The seized items and appellant were thereafter brought to the police crime laboratory for examination of the forensic chemist, P/Insp. Jimmy Calabocal (P/Insp. Calabocal). The results revealed that: (1) the contents of all the plastic sachets were positive for methamphetamine hydrochloride or *shabu*;<sup>[6]</sup> (2) the contents of the two sachets recovered from appellant weighed 0.09 gram while the other one subject of the sale weighed 0.05 gram;<sup>[7]</sup> and (3) appellant's hand and the marked money were positive for ultraviolet fluorescent powder.<sup>[8]</sup>

During trial, PO1 Rosales identified appellant as the person who sold him *shabu* for P100.00 during the buy-bust operation.<sup>[9]</sup> He also identified the sachets of *shabu* that were formally offered in evidence as the same items that were seized from appellant.<sup>[10]</sup>

For his part, appellant pleaded "not guilty" to the crimes charged.<sup>[11]</sup> He testified that while waiting for a jeep to take him home, persons in civilian clothes approached him and asked if he is a Muslim. When he answered in the negative, they invited him to go with them to a *barangay* hall since a complaint had allegedly been filed against him. When he refused, they forced him to go with them. Appellant claimed that he was taken instead to a house and told to produce P20,000.00 in exchange for his release. Because he failed to comply, he was transferred to the police station where he was given a cellphone to call someone to post bail for him. On his second day in the police precinct, he was taken to a certain Fiscal Guiyab who signed a document presented by PO1 Rosales. They then proceeded to the hospital for a medical examination before returning to the city jail. As to the result of the examination for the presence of fluorescent powder, appellant explained that his hands tested positive because a certain Antonio gave him a P100.00 bill purportedly to be spent for his dinner. He accepted the bill but when he was about to be accompanied out of the detention cell, Antonio took back the money.<sup>[12]</sup>

### ***Ruling of the Regional Trial Court***

In its Joint Decision of December 8, 2005,<sup>[13]</sup> the RTC ruled that the prosecution was able to prove the guilt of appellant beyond reasonable doubt for the offenses charged. It found the buy-bust operation to be valid, the warrantless arrest and body search carried out against appellant as justified, and the testimony of PO1 Rosales to be credible. The RTC likewise held that the prosecution was able to establish the unbroken link in the chain of custody of the illegal drugs in both cases. The dispositive portion of its Joint Decision reads:

PREMISES CONSIDERED, the prosecution having established to a moral certainty the guilt of Accused JIMMY GABUYA Y ADLAWAN, this Court hereby renders judgment as follows:

1. In Crim. Case No. 68370 for Violation of Sec. 5, Art. II of R.A. 9165, this Court in the absence of any aggravating circumstance hereby sentences aforementioned Accused to LIFE IMPRISONMENT, and to pay the fine of Five hundred thousand pesos (P500,000.00) with subsidiary

imprisonment in case of insolvency.

2. In Crim. Case No. 68369 for Violation of Sec. 11, Art. II of [R.A.] 9165, this Court in the absence of any aggravating circumstance hereby sentences same Accused to twelve (12) years, eight (8) months and one (1) day to seventeen (17) years and eight (8) months and to pay the fine of Three hundred thousand pesos (P300,000.00) with subsidiary imprisonment in case of insolvency.

Subject drugs in both cases are hereby declared confiscated and forfeited in favor of the government to be dealt with in accordance with law.

x x x x<sup>[14]</sup>

### ***Ruling of the Court of Appeals***

In his appeal to the CA, appellant asserted that the RTC erred in finding him guilty beyond reasonable doubt since the failure of the buy-bust team to coordinate with the Philippine Drug Enforcement Agency (PDEA) and to mark the seized items at the place of seizure constituted gaps in the chain of custody. These gaps, according to appellant, created doubts as to whether the items allegedly seized from him were the same items presented during the trial.

In its Decision<sup>[15]</sup> dated May 19, 2010, the CA ruled that the prosecution ably established the following elements of illegal sale of dangerous drugs: (1) the identity of the buyer and seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. This is considering that PO1 Rosales positively identified appellant as the person who sold to him the *shabu* in exchange for the marked money.

The CA also affirmed the RTC's ruling that appellant is guilty of possession of dangerous drugs as characterized by the following requisites: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. The appellate court took note that PO1 Rosales testified that other sachets of *shabu* were recovered from appellant during the buy-bust operation and that his testimony is corroborated by Physical Sciences Report No. D-630-03 and by the testimony of P/Insp. Calabocal, which both show that the specimens confiscated from appellant are indeed *shabu*.

The CA held that the RTC did not err in finding the warrantless arrest and search effected upon appellant legally justified since he was apprehended in *flagrante delicto* during a legitimate buy-bust operation. It likewise ruled that aside from the fact that findings of the RTC are accorded high respect, the failure of appellant to prove any ill motive on the part of the buy-bust team justifies the RTC's application of the presumption that the police officers performed their duties regularly.

Moreover, the CA did not find merit in appellant's argument that the failure of the police officers to mark the seized items at the scene of the crime, to conduct an inventory of the subject specimen, and to take photograph thereof are procedural lapses that created gaps in the chain of custody. It held that non-compliance with

the procedure for the custody of seized items under paragraph 1, Section 21, Article II of R.A. 9165 does not invalidate the buy-bust operation since the prosecution was nonetheless able to prove that the police officers properly preserved the integrity and evidentiary value of the seized *shabu* as provided in Section 21(a), Article II of the Implementing Rules and Regulations of said law.

In view of the above, the CA ultimately ruled thus:

WHEREFORE, premises considered, the present appeal is hereby DENIED and [the] challenged Decision of the Court *a quo* dated 08 December 2005 STANDS.

SO ORDERED.<sup>[16]</sup>

Insisting on his acquittal, appellant interposes this appeal where he raises as additional issues in his Supplemental Brief<sup>[17]</sup> the following: (1) the failure of the police officers to mark the seized sachets of *shabu* not only at the scene of the crime but also in his presence; and (2) the lack of information on the whereabouts of the *shabu* after it was examined by the Forensic Chemist, P/Insp. Calabocal, whose testimony did not cover the manner in which the specimens were handled after the examination.

### **Our Ruling**

The appeal has no merit.

After a thorough review of the records of the case vis-à-vis the assailed Decision, the Court finds the appellate court's resolution of the issues raised in Accused-Appellant's Brief, as well as the conclusions reached by it, to be in order. Hence, there is no reason to dwell on them again.

The Court notes, however, that the CA did not touch upon appellant's assertion that the failure of the police officers to coordinate with the PDEA is a serious procedural defect. Be that as it may, it must be made clear that the resolution of the said issue will not result in appellant's exoneration. The omission of the CA to discuss and pass upon the same in its assailed Decision is not a fatal flaw since coordination of the buy-bust operation with the PDEA is not an indispensable element of the crimes of illegal sale and possession of dangerous drugs such as *shabu*.<sup>[18]</sup>

Going now to the issues raised by appellant in his Supplemental Brief, appellant avers that the police officers did not comply with Section 21 of R.A. 9165 and its Implementing Rules, particularly when they failed to mark the seized items at the scene of the crime *in his presence*. He likewise argues that the lack of information on the whereabouts of the *shabu* after its examination by the forensic chemist and the absence of testimony thereon revealed a gap in the chain of custody of the evidence.

It is well to note that the records of the case are bereft of evidence that appellant, during trial, interposed any objection to the non-marking of the seized items in his presence and the lack of information on the whereabouts of the *shabu* after it was