

FIRST DIVISION

[G.R. No. 201100, February 04, 2015]

**PEOPLE OF THE PHILIPINES, PLAINTIFF-APPELLEE, VS. MHODS
USMAN Y GOGO, ACCUSED-APPELLANT.**

D E C I S I O N

PEREZ, J.:

Assailed in the present notice of appeal is the Decision^[1] dated 30 June 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03942, which affirmed *in toto* the Decision^[2] dated 13 August 2008 of the Regional Trial Court (RTC), Manila, Branch 23 in Criminal Case No. 03-222096, finding accused-appellant Mhods Usman y Gogo (accused-appellant) guilty beyond reasonable doubt of illegal sale of *shabu* under Sec. 5, Article II of Republic Act No. 9165 (R. A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*, sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of P500,000.00.

In an Information dated 22 December 2003,^[3] accused-appellant was charged with violation of Section 5, Art. II of R. A. No. 9165, as follows:

That on or about December 17, 2003 in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there willfully, unlawfully and knowingly sell zero point zero six eight (0.068) grams of white crystalline substance containing methylamphetamine hydrochloride known as "shabu," a dangerous drug.

Upon arraignment, accused-appellant, assisted by counsel, pleaded not guilty to the crime charged.^[4]

During pre-trial, the parties stipulated on the following: (1) the identity of accused-appellant, (2) the jurisdiction of the court, (3) the qualification of the expert witness, and (4) the genuineness of the documentary evidence submitted by the prosecution.^[5] Thereafter, trial on the merits ensued.

As culled from the records, the prosecution's version of the facts was a combination of the testimonies of the officers: PO1 Joel Sta. Maria (PO1 Sta. Maria), PO2 Elymar Garcia, Irene Vidal, and PSI Judycel Macapagal (PSI Macapagal):

PO1 JOEL STA. MARIA testified in gist as follows: On December 17, 2003, he was assigned at the Anti Illegal Drugs Special Operations Task Unit of Police Station No. 2. At around 11:00 o'clock in the morning of said

date, while on duty at PS 2, a male confidential informant came to their office and informed SPO3 Rolando del Rosario, their team leader, of the illegal selling of shabu by a certain Mhods, a muslim at Isla Puting Bato. He heard them conversing as he was not far from them. SPO3 del Rosario relayed the information to SAID Chief Nathaniel Capitanea who instructed the former to form a team and to conduct a possible buy bust operation against the subject. A five-member team was at once formed consisting of PO2 Elymar Garcia, SPO3 Rolando del Rosario, PO3 Ricardo Manansala, PO1 Erick Barias and the herein witness. They agreed that they will buy P200.00 worth of shabu from the subject, who was later identified as the herein accused. SPO3 del Rosario prepared the buy bust money consisting of two P100.00 bills with marking "RR". He was designated to act as poseur buyer so the marked bills were delivered to him by the team leader, SPO3 del Rosario. They agreed likewise that the witness will immediately arrest the subject if the sale is consummated. A pre-operation report was also prepared (Exh. "A"). Apart from the identity and the location of the subject Mhods, the confidential informant described the former as wearing a skin head hair, well built body, fair complexion and wearing fatigue either pants or t-shirt. They left the station at 3:15 p.m. and conveyed to the Isla Puting Bato on board an owner type jeep and scooter. He rode in the owner type jeep with SPO3 del Rosario, PO3 Manansala, and the confidential informant arriving in the target place at 3:35 p.m., as the jeep cannot passed (sic) through, he and the confidential informant rode a side car going to Isla Puting Bato, thereafter they alighted from the pedicab and entered a small alley where they saw MHODS. Accused approached the Confidential Informant and asked him if he is going to get, meaning if he is going to buy shabu. Instead of answering, the confidential informant pointed to him who was beside him at that time. The herein witness showed the marked money and the accused took them. Accused turned his back a little and got something from his right pocket and passed to him a plastic sachet containing white crystalline substance suspected to be shabu. Upon receipt he grabbed the accused and introduced himself as a police officer. He informed the accused of his constitutional rights and the law he violated (Sec. 5 of RA 9165). Accused resisted but other policemen rushed to assist him. He kept possession of the evidence from place of arrest and upon arriving in the police station, he marked the same with the accused's initials "MUG" (Exh. "B-1"). Thereafter, he turned over the stuff to the investigator Elymar Garcia, who in turn prepared a request for laboratory examination (Exhibit "C") and brought the same together to the crime laboratory for examination. After lab test, the specimen was found positive for methamphetamine hydrochloride as borne in the Chemistry Report No. D2858-03 (Exhibit "D"). The arresting team executed an Affidavit of Apprehension (Exhibits "E" to "E-4") and a Booking Sheet and Arrest Report (Exhibit "F"). Subsequently, the case was referred for inquest proceedings on December 18, 2003 (Exhibit "G") for the filing of appropriate proceedings (TSNs dated August 30, 2005).

On cross-examination, witness said that it was the accused who actually initiated the buy bust operation by offering him and the confidential informant to buy illegal drugs. After arrest, he did not mark the evidence in the area because the accused was resisting and they do not know his

name yet. They also did not prepare an inventory of seized items. On re-cross, the witness said it was the investigator's duty to prepare the inventory of seized item (TSNs dated February 2, 2006).

PO2 Elymar Garcia next took the witness stand and he corroborated the testimony of PO1 Joel Sta. Maria on material points. He added that he acted merely as security perimeter and admitted that they did not follow the confidential informant and the poseur buyer in Isla Puting Bato and just waited for the arrest of the accused. Thus, he did not see the conduct of the buy bust operation. The poseur buyer handed the evidence to him at the police station after he marked the same. He immediately prepared a request for laboratory examination and brought the same and the specimen at the crime laboratory (TSNs dated Sept. 27, 2006).

The prosecution presented Irene Vidal, Records Custodian of the Office of the City Prosecutor of Manila. Her testimony was dispensed with after the defense agreed to stipulate on the following material points, to wit: that she is in charge of safekeeping records and evidence submitted to their office; that she has brought with her the two pieces 100 peso marked bills with Serial Nos. BT670067 and EX15103, respectively (Exhibits "I" and "J"), subject matter of this case, and that she has no personal knowledge of the facts and circumstances surrounding the arrest of the accused.

On June 26, 2007, the testimony of PSI Judycel A. Macapagal was stipulated on by the prosecution and the defense specifically the qualification and expertise of the forensic chemist, the authenticity and due execution of the letter request for laboratory examination dated December 18, 2003 (Exh. "C") and the Chemistry Report (Exhibit "D"). The defense admitted the existence of small brown envelop (Exhibit "B") and the specimen contained thereat which is one heat sealed transparent plastic sachet marked "MUG" (Exh. "B-1"). It was also admitted that the laboratory examination on the specimen yielded positive result for methylamphetamine hydrochloride, a dangerous drugs; that the Forensic Chemist has brought the documents and specimen to Court. The prosecution in turn admitted that the Forensic Chemist has no personal knowledge as to the source of the specimen as well as the person who caused the markings on the specimen. [6]

In defense, accused-appellant claimed that he was a victim of frame-up by the arresting officers, to wit: [7]

For his part, accused denied the allegations of the police officers and countered as a defense that he was framed up by the arresting officers. He testified that he was, in fact, arrested between 2 to 3 PM on December 17, 2003 and not at 4PM of said day. He was then inside the comfort room in his house when the policemen in civilian clothes entered and kicked the door of the CR. The policemen ransacked his house and took his money which he borrowed from Uphill which was intended for

use in his business. When he got out of the restroom, he was handcuffed and taken to Police Station No. 2 where he was forced to admit selling shabu. He showed them his identification card to prove that he was engaged in a legal trade, but the police did not heed his pleas. The team leader SPO1 del Rosario demanded P400,000.00 from him in exchange of his freedom which he was not able to give. On cross, he said that he did not know the police officers prior to his arrest and therefore there is no established motive for them to charge him falsely of such a grave offense. He admitted that he is not a good subject of extortion.

Finding the evidence of the prosecution sufficient to establish the guilt of accused-appellant, the RTC rendered a judgment of conviction, viz.:^[8]

WHEREFORE, with all the foregoing facts and conclusions, accused MHODS USMAN Y GOGO, is hereby found GUILTY of violating Section 5, Article II of Republic Act No. 9165 in the manner stated in the Information and is sentenced to suffer the penalty of life imprisonment and to pay a fine of P500,000.00, without subsidiary imprisonment in case of insolvency.

The shabu, subject matter of this case, is hereby forfeited in favor of the STATE and is ordered turned over to the PDEA for their appropriate destruction pursuant to existing Rules.

Accused-appellant appealed before the CA, assigning the following errors:

I

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE WARRANTLESS SEARCH AND SUBSEQUENT ARREST AS ILLEGAL.

II

THE COURT A QUO GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANTS' RIGHTS UNDER REPUBLIC ACT NO. 7438 (AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING AND INVESTIGATING OFFICERS, AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF) WERE VIOLATED.

III

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS. ^[9]

After a thorough review of the records, the CA affirmed *in toto* the RTC Decision.

The appellate court ruled that accused-appellant's arrest was valid because he was caught *in flagrante delicto* selling dangerous drugs, that all the elements of illegal sale of regulated or prohibited drugs are present in the case at bar, that there was substantial compliance with the legal requirements on the handling of the seized item, and that there was no proof to support accused-appellant's allegation of frame-up. Thus, the CA held:

WHEREFORE, premises considered, the Decision dated August 13, 2008 of the Regional Trial Court, National Capital Judicial Region, Branch 23, Manila, is hereby **AFFIRMED in toto**.^[10]

Accused-appellant is now before the Court, re-pleading the arguments he raised before the CA. In particular, accused-appellant claims that his warrantless arrest was illegal;^[11] that he was not apprised of his rights under Sections 2 and 3 of R. A. No. 7438;^[12] and that there were serious lapses in the procedure mandated by R. A. No. 9165 in the handling of the seized *shabu*, as well as non-compliance with the chain of custody rule, resulting in the prosecution's failure to properly identify the *shabu* offered in court as the same drugs seized from accused-appellant.^[13]

We dismiss the appeal.

To begin with, we hold that accused-appellant can no longer question the legality of his arrest. In *People v. Vasquez*,^[14] we reiterated the rule that any objection, defect or irregularity attending an arrest must be made before the accused enters his plea on arraignment, and having failed to move for the quashal of the Information before arraignment, accused-appellant is now estopped from questioning the legality of his arrest. Moreover, any irregularity was cured upon his voluntary submission to the RTC's jurisdiction.

In the same vein, the claim of accused-appellant that he was not apprised of the rights of a person taken into custody under R. A. No. 7438, which claim was raised only during appeal and not before he was arraigned, is deemed waived.^[15]

Be that as it may, the fact of the matter is that the accused-appellant was caught *in flagrante delicto* of selling illegal drugs to an undercover police officer in a buy-bust operation. His arrest, thus, falls within the ambit of Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure when an arrest made without warrant is deemed lawful.^[16]

In *People v. Loks*,^[17] we acknowledged that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors. Since accused-appellant was caught by the buy-bust team *in flagrante delicto*, his immediate arrest was also validly made. The accused was caught in the act and had to be apprehended on the spot.

Accused-appellant's arrest being valid, we also hold that the subsequent warrantless seizure of the illegal drugs from his person is equally valid. The legitimate warrantless arrest also cloaks the arresting police officer with the authority to validly search and seize from the offender those that may be used to prove the commission