

FIRST DIVISION

[G.R. No. 207988, March 11, 2015]

**THE PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
BRIAN MERCADO Y SARMIENTO, ACCUSED-APPELLANT.**

DECISION

PEREZ, J.:

Before this Court is an appeal from the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR HC No. 04942 affirming the Decision^[2] in Criminal Case Nos. C-77992 and C-77993 rendered by the Regional Trial Court (RTC), Branch 120 of Caloocan City. The RTC Decision found accused-appellant Brian Mercado y Sarmiento (accused-appellant) guilty beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165 (R.A. No. 9165), otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

The accused-appellant was charged of violation of Sections 5 and 11, Article II of R.A. No. 9165, in two (2) Informations, both dated 31 July 2007, which respectively read as follows:

Crim. Case No. 77992 (For violation of Section 5, R.A. No. 9165).

That on or about the 27th day of July, 2007 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously sell and deliver to PO3 RAMON GALVEZ, who posed, as buyer, a plastic sachet containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.02 gram, a dangerous drug, without corresponding license or prescription therefore, knowing the same to be such.^[3]

Crim. Case No. 77993 (For violation of Section 11, R.A. No. 9165).

That on or about the 27th day of July, 2007 in Caloocan City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Two (2) sachets containing METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.02 gram & 0.02 gram, respectively, when subjected for laboratory examination gave positive

result to the tests of Methylamphetamine Hydrochloride, a dangerous drug.^[4]

Upon arraignment, the accused-appellant pleaded not guilty to said charges.^[5] Trial thereafter proceeded.

Based on the evidence presented and on the stipulations and admitted facts entered into by the parties, the summary of factual findings is stated as follows:

The Version of the Prosecution

[A]t around 10:00 a.m. on July 27, 2007, acting on a tip from a confidential informant that accused-appellant was selling *shabu*, the Station Anti-Illegal Drugs Special Operation Unit (SAID-SOU) of the Philippine National Police (PNP) organized a buy-bust operation [with] SPO2 Wilfredo Quillan as team leader, PO3 [Ramon] Galvez as poseur-buyer, and SPO1 [Fernando] Moran, PO2 Eugene Amaro, PO2 Celso Santos and PO3 Jose Martirez as members. After SPO2 Quillan briefed the buy-bust team, a pre-operation report was prepared. PO3 Galvez was provided with two (2) one hundred-peso bills which he marked on the right portion with his initials "RG". Then, the team and the informant boarded a passenger jeepney and proceeded to Phase 3-D, Camarin, Caloocan City. When the informant pointed to accused-appellant, PO3 Galvez approached him and said, "[p]re, pa-iskor naman", offering to buy P200.00 worth of *shabu*. He then handed the buy-bust money and accused-appellant brought out from his pocket three (3) pieces of plastic sachets, chose one (1) sachet and gave it to PO3 Galvez. As the sale was already consummated, PO3 Galvez introduced himself as a police officer, arrested accused-appellant, and gave the pre-arranged signal to his companions by scratching his nape. When SPO1 Moran rushed in, PO3 Galvez marked the plastic sachet with "BMS/RG" and told SPO1 Moran about the remaining two (2) plastic sachets in accused-appellant's pocket. SPO1 Moran then frisked him and confiscated the items which he marked as "BMS/FM-1" and "BMS/FM-2". Thereafter, they brought accused-appellant and the confiscated items to the SAID-SOU office in Samson Road, Caloocan City, and turned them over to the investigator, PO2 [Randulfo] Hipolito, who prepared the corresponding evidence acknowledgment receipt and request for laboratory examination.

Qualitative examination conducted on the confiscated three (3) heat-sealed transparent plastic sachets containing white crystalline substance, each weighing 0.02 gram, yielded positive for methylamphetamine hydrochloride or *shabu*, a dangerous drug.^[6]

The Version of the Defense

On July 26, 2007, at around 9:30 to 10:00 in the evening, accused-appellant returned the jeepney he was driving to the garage of Phase 3-

B, Camarin, Caloocan City. He was walking home when a jeepney with police officers on board suddenly stopped in front of him. PO3 Galvez asked accused-appellant where he came from. He answered that he just came from driving his jeepney showing the police officers his driver's license. Accused-appellant was then forced to ride in the jeepney where he saw eight (8) persons in handcuffs. He was brought to the police station and was told to produce ten thousand pesos (P10,000.00) in exchange for his liberty, otherwise, a case would be filed against him. Unable to produce the money, accused-appellant faced the present charges.^[7]

The Ruling of the RTC

After trial on the merits, the RTC rendered a Decision^[8] finding the accused-appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of R.A. No. 9165. The dispositive portion of which is hereunder quoted, to wit:

Premises considered, this court finds and so holds that:

(1) The accused **Brian Mercado y Sarmiento GUILTY** beyond reasonable doubt for violation of Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and imposes upon him the following:

(a) In **Crim. Case No. C-77992**, the penalty of Life Imprisonment and a fine of Five Hundred Thousand Pesos (P500,000.00); and

(b) In Crim. Case No. C-77993, the penalty of Imprisonment of twelve (12) years and one (1) day to Fourteen (14) years and a fine of Three Hundred Thousand Pesos (P300,000.00).

The drugs subject matter of these cases are hereby confiscated and forfeited in favor of the government to be dealt with in accordance with law.^[9]

The trial court concluded that the evidence presented by the prosecution sufficiently satisfied the quantum required for accused-appellant's conviction. It declared that the fact of sale was sufficiently established upon showing the complete detailed manner of negotiation of said sale, exchange of consideration, and handing of the subject of the sale. The court a quo ruled that, as long as the police officer went through the operation as a buyer and his offer was accepted by the accused-appellant, and the dangerous drugs delivered to the former, the crime is considered consummated by the delivery of goods.^[10] Likewise, the testimonies of the police officers who participated in the buy-bust operation appear credible and reliable since absence of any showing of ill-motive on their part to concoct trumped charges, they enjoy the presumption of regularity in the performance of their duties.^[11] On the other hand, the denial of the accused-appellant and his mere allegation of extortion were found to be unsubstantiated by any convincing and credible evidence. Hence, being considered as negative, weak, and self-serving evidence, accused-appellant's

bare denial cannot prevail over the positive testimony of the prosecution's witnesses and the physical evidence which supported said judgment of conviction.^[12]

The Ruling of the CA

On intermediate appellate review, the CA affirmed the RTC's Decision in convicting the accused-appellant. It ruled that failure to comply with Section 21 of R.A. No. 9165 will not render the arrest of the accused illegal, nor will it result to the inadmissibility in evidence against the accused of the illegal drugs seized in the course of the entrapment operation. What is of utmost relevance is the preservation of the integrity and maintenance of the evidentiary value of the confiscated illegal drugs, for in the end, the same shall necessarily be the thrust that shall determine the guilt or innocence of the accused. The prosecution therefore must simply show that the seized item recovered from appellant was the same item presented in court and found to be an illegal/prohibited drug. These were all established and proven beyond reasonable doubt in the instant case.^[13] Accordingly, the prosecution was able to sufficiently bear out the statutory elements of the crime of illegal sale and illegal possession of such drugs committed by accused-appellant. The disposal on appeal reads:

It is well-settled that objection to the admissibility of evidence cannot be raised for the first time on appeal; when a party desire the court to reject the evidence offered, he must so state in the form of objection. Thus, as the trial was already concluded, [w]e can no longer turn back to find out the justifiable grounds for the omission of the legal requisites.

In any case, the procedural lapse did not render accused-appellant's arrest illegal or the evidence adduced inadmissible. If there is non-compliance with Section 21, the issue is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. After a scrutiny of the records, [w]e find the evidence adduced more than sufficient to prove the charges against accused-appellant. Therefore, considering that no circumstance exists to put the trial court's findings in error, [w]e apply the time-honored precept that findings of the trial courts which are factual in nature and which involve credibility are accorded respect when no glaring errors, gross misapprehension of facts and speculative, arbitrary and unsupported conclusions can be gathered from such findings.

FOR THESE REASONS, [w]e **DENY** the appeal and **AFFIRM** the assailed February 23, 2011 Decision of the Caloocan City Regional Trial Court, Branch 120.^[14]

Moreover, the appellate court emphasized that, during trial, accused-appellant neither suggested that there were lapses in the safekeeping of the suspected drugs that could affect their integrity and evidentiary value nor objected to their admissibility. Accused-appellant was then precluded from raising such issue which must be timely raised during trial.^[15]

Upon elevation of this case before this Court, the Office of the Solicitor General

manifested that it will no longer file its supplemental brief and, instead, will adopt all the arguments in its brief filed before the CA.^[16] On the other hand, accused-appellant raised the issue that the court *a quo* gravely erred in convicting him notwithstanding the police operatives' patent non-compliance with the strict and mandatory requirements of R.A. No. 9165.

The Issue

Whether or not the RTC and the CA erred in finding that the evidence of the prosecution was sufficient to convict the accused of the alleged sale and possession of methamphetamine hydrochloride or *shabu*, in violation of Sections 5 and 11, respectively, of R.A. No. 9165.

Our Ruling

We sustain the judgment of conviction.

The Court finds no valid reason to depart from the time-honored doctrine that where the issue is one of credibility of witnesses, and in this case their testimonies as well, the findings of the trial court are not to be disturbed unless the consideration of certain facts of substance and value, which have been plainly overlooked, might affect the result of the case.^[17]

Upon perusal of the records of the case, we see no reason to reverse or modify the findings of the RTC on the credibility of the testimony of prosecution's witnesses, more so in the present case, in which its findings were affirmed by the CA. It is worthy to mention that, in addition to the legal presumption of regularity in the performance of their official duty, the court *a quo* was in the best position to weigh the evidence presented during trial and ascertain the credibility of the police officers who testified as to the conduct of the buy-bust operation and in preserving the integrity of the seized illegal drug.

This Court has consistently ruled that for the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of R.A. No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor.^[18] In other words, there is a need to establish beyond reasonable doubt that the accused actually sold and delivered a prohibited drug to another, and that the former indeed knew that what he had sold and delivered to the latter was a prohibited drug.^[19] To reiterate, what is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, plus the presentation in court of *corpus delicti* as evidence.^[20] On the other hand, we have adhered to the time-honored principle that for illegal possession of regulated or prohibited drugs under Section 11 of the same law, the prosecution must establish the following elements: (1) the accused is in possession of an item or object, which is identified to be a prohibited or regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.^[21]

Undoubtedly, the prosecution had indeed established that there was a buy-bust