

FIRST DIVISION

[G.R. No. 200295, August 19, 2015]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. EDGAR BOLO Y FRANCO, ACCUSED-APPELLANT.

DECISION

PEREZ, J.:

Before the Court is a notice of appeal assailing the Decision^[1] dated April 28, 2011 of the Court of Appeals in CA-G.R. CR-H.C. No. 03651, which affirmed the Decision^[2] dated October 21, 2008 of the Regional Trial Court (RTC) of Caloocan City, Branch 123, in Criminal Cases No. C-74987 and No. C-74988, finding accused-appellant Edgar Bolo y Franco guilty beyond reasonable doubt of illegal sale and illegal possession of *shabu* under Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

In Criminal Case No. C-74987, accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

That on or about the 1st day of April, 2006 in Caloocan City 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 sell and deliver to PO1 ROLLY JONES MONTEFRIO who pose[d] as buyer [of] METHYL AMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.21 gram without corresponding license or prescription therefore, knowing the same to be such.

CONTRARY TO LAW.^[3]

Meanwhile, in Criminal Case No. C-74988, accused-appellant was charged with violation of Section 11, Article II of R.A. No. 9165, to wit:

That on or about the 1st day of April, 2006 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 METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 0.19 gram, 0.22 gram & 0.20 gram when subjected [to] chemistry examination gave positive result of METHYLAMPHETAMINE HYDROCHLORIDE, a dangerous drug.

CONTRARY TO LAW.^[4]

Although these charges were anchored on a single incident, the two sets of Information were raffled separately. Criminal Case No. C-74987 was raffled to Branch 123, while Criminal Case No. C-74988 was raffled to Branch 127.

On separate arraignments, accused-appellant pleaded not guilty to both of the charges.^[5]

In an Order dated January 23, 2007,^[6] the consolidation of these cases was ordered. Thereafter, a joint trial on the merits ensued.

As succinctly summarized by the RTC, the version of the prosecution is as follows:

On April 1, 2006, Col. Cuaton, Chief of the SAID SOU of the Caloocan City Police Station, acting on the information furnished by their confidential informant that an alias Gagay was engaged in illegal drug activities at 11th and 12th street, Caloocan City, ordered that a buy bust team be formed to conduct an operation against the said person.

Accordingly, the team was formed composed of PO3 Valderama, PO3 Modina, PO3 Galvez, PO1 Rosales and PO1 Montefrio. PO1 Montefrio was designated as the poseur buyer who received two (2) P100 bills as buy bust money pre-dusted with ultra violet powder. On the other hand, PO3 Pagsolingan and the rest of the team were designated as backups.

Having agreed on what the signal would be once the same is consummated and after securing a Pre-Operation Report from the PDEA, the team then proceeded to the target place at 11th and 12th avenue, 7th street, Caloocan City. Upon their arrival and upon seeing alias Gagay, the latter was introduced by the informant to Montefrio who immediately announced his intention to buy *shabu*. Alias Gagay then asked Montefrio how much. In response, Montefrio said "two hundred pesos" and simultaneously handed the money to alias Gagay, the accused herein. Upon receipt of the money, the accused took from his pocket a plastic sachet from which he pulled one plastic sachet which he gave to PO1 Montefrio who thereafter gave the pre-arranged signal. Thereafter, he arrested the accused and introduced himself as a police officer and recovered the buy bust money from the hand of the accused.

Upon seeing the pre-arranged signal, Pagsolingan ran towards the accused and Montefrio in order to arrest the former. Having been told by Montefrio that there were still other sachets in the pocket of the accused, Pagsolingan ordered the latter to empty his pocket. As a result, Pagsolingan recovered three more plastic sachets from the accused.

The police officers then brought the accused to their office where they turned him over together with the recovered evidence to the investigator, PO2 Randolph Hipolito. Upon receipt of the evidence, PO2 Randolph Hipolito marked the evidence that he received from PO1 Montefrio as EBF-1 Buy Bust 04-01-06. On the other hand, the evidence that PO3 Pagsolingan recovered were marked as EBF-2, EBF-3 and EBF-4. Thereafter, the investigator prepared a letter addressed to the Crime Laboratory Office requesting that the buy bust *shabu* as well as the specimen recovered from the accused be subjected to laboratory examination to determine whether they contained Methamphetamine.

hydrochloride. The investigator likewise prepared a letter request for the detection of ultra violet powder on the persons of the accused, the poseur buyer, PO1 Montefrio as well as on the two P100 bills.

Upon receipt of the Letter Request from the DAID-SOTG, Police Senior Inspector Jesse de la Rosa, conducted an examination on the specimen contained in four plastic sachets pre-marked with EBF-1 Buy Bust 4-01-06 to EBF-4. His examination gave positive results to the test of Methylamphetamine Hydrochloride, a dangerous drug. He reduced his findings into writing contained in Physical Science Report D-167-06.

He also received a request for the detection of ultra violet powder on the living persons of the accused and of PO1 Montefrio as well as the money that was used in the buy-bust operation. His examination gave positive result for the presence of ultra violet powder on the palmar portion of both hands of the accused and of PO1 Montefrio as well as the buy bust money. His findings were contained in PSR No. PI-003-06.^[7]

The defense's version, on the other hand, is as follows:

Accused Edgar Bolo testified that on March 31, 2006 at around 8:30 pm, he was at 7th St., 11th Ave., Caloocan City. He was fetched by his friends at the "saklaan" and one of them is Gil. They invited him to attend the graduation of Gil's child for thanksgiving at 11th Ave., 7th Street, Caloocan City. At the house of Gil, while they were having drinking session, more than ten policemen arrived and introduced themselves as such and frisked them. Then the policemen left and proceeded to another alley where there were also people drinking. He identified one of them as SPO1 Moran. He knew him because he gives money when he goes to the "saklaan." As he was leaving the place, he was accompanied by a lady friend. Upon reaching 7th St., the lady friend looked back and saw four male persons coming towards them. When he also looked back, he saw them holding clubs and pipes. Upon seeing them, he ran towards 6th St. [W]hile running, he shouted for help. He was blocked on his way [by] an owner type jeep from where SPO1 Moran alighted, pointing a gun at him. He was brought to Sangandaan. He asked them what was his violation, but they did not answer. It was only when he was inquested that he knew of his violation which is Section 5 and Section 11 of RA 9165. Then he had his medical check up. While he was handcuffed, PO1 Montefrio wiped both his hands and his pockets with marked money.

Janet de Vera testified that on March 31, 2006 at around 8:30, she was invited by a friend to attend a graduation celebration. At the celebration, accused was also one of the visitors. When she decided to go home, accused was also on his way home and asked her where he could take a ride in going home.

Both of them then left the place. On their way home, she looked back and sensed that there were male persons who were following them. She told the accused on what she noticed. Accused also looked back and

confirmed that they were being followed. She told the accused to run and the latter ran towards 12th Avenue.^[8]

After weighing the evidence, the RTC convicted accused-appellant on both charges. The RTC held that the presence of ultraviolet powder on both hands of the accused established that a buy-bust transaction took place. It also accorded full faith and credence to the testimonies of Police Officer 1 Rolly Jones Montefrio (PO1 Montefrio) and PO3 Rodrigo Pagsolingan (PO3 Pagsolingan) as there were no imputations of any evil or improper motives on their persons. Also, it ruled that the specimens recovered from accused-appellant were the same items turned over to the investigator and then to the forensic chemist, and which were found to be *shabu*. The RTC then concluded that, as against the overwhelming pieces of evidence presented by the prosecution, the defenses of denial and frame-up raised by accused-appellant did not inspire belief.

The RTC then convicted accused-appellant in this manner:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

- 1.) In Crim. Case No. C-74987, finding accused EDGAR BOLO Y FRANCO guilty beyond reasonable doubt of the crime of Violation of Section 5, Article II, RA 9165 and hereby sentencing him to suffer the penalty of life imprisonment and to pay a fine of One Million Pesos ([P]1,000,000.00) without subsidiary imprisonment in case of insolvency.
- 2.) In Crim. Case No. C-74988, finding accused EDGAR BOLO Y FRANCO guilty beyond reasonable doubt of the crime of Violation of Sec. 11, Art. II[,] RA 9165 and hereby sentencing him to suffer the penalty of imprisonment from Twelve (12) years and One (1) day to Thirteen (13) years and Eight (8) months and to pay a fine of P300,000.00 without subsidiary imprisonment in case of insolvency[.]

The *shabu* subject matter of these cases is hereby confiscated in favor of the government to be disposed of in accordance with the rules governing the same.

The Branch Clerk of Court is hereby ordered to turn-over to the Office of the Clerk of Court the buy bust money in the amount of P200.00.

Costs against the accused.

SO ORDERED.^[9]

Accused-appellant appealed before the Court of Appeals, raising the following errors:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF VIOLATIONS OF

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE ARRESTING OFFICERS' PATENT NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DRUGS.^[10]

III

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE FACT THAT THE PROSECUTION FAILED TO PROVE THE PROPER CHAIN OF CUSTODY OF THE SEIZED DANGEROUS DRUGS.^[11]

After a review of the records, the Court of Appeals affirmed the RTC Decision. The Court of Appeals found that there was no break in the chain of custody of the confiscated drugs; thus, the integrity and the evidentiary value of the same were preserved and established before the RTC. The appellate court also ruled that the testimony of PO1 Montefrio clearly established the elements for accused-appellant's violation of Sections 5 and 11, Article II of R.A. No. 9165, and that there was no reason to doubt PO1 Montefrio's testimony.

As such, the Court of Appeals held:

WHEREFORE, premises considered, the assailed Decision dated 21 October 2008 of the Regional Trial Court of Caloocan City, Branch 123[,]
is hereby **AFFIRMED in toto**.

SO ORDERED.^[12]

Accused-appellant is now before the Court, seeking a review of his conviction. In his Brief, accused-appellant claims that the failure of the arresting police officers to comply with Section 21, Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, specifically on the requirements of markings, physical inventory and photographs, translates to their failure to preserve the integrity and the evidentiary value of the seized items,^[13] especially since the testimonies of the prosecution witnesses failed to establish the chain of custody of the seized drugs.^[14] Also, accused-appellant questions the authenticity of the ultraviolet dusting of the buy-bust money in light of the possible contamination of such as the police officers surrendered said dusted money without first placing them in a sealed envelope or container. Accused-appellant then intimates on the possibilities that the dusting was done only after he was arrested and that he was deliberately forced to hold the same.^[15]

We dismiss the appeal.

Indeed, as we held in *People v. Torres*^[16] -

The identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the