

THIRD DIVISION

[G.R. No. 215731, September 02, 2015]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS.
ROLANDO CARRERA Y IMBAT, ACCUSED-APPELLANT.**

D E C I S I O N

VILLARAMA, JR., J.:

Before us is an appeal^[1] from the June 10, 2014 Decision^[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05885 modifying the November 27, 2012 Decision^[3] of the Regional Trial Court (RTC), Branch 127, Caloocan City, finding appellant Rolando Carrera guilty beyond reasonable doubt of violation of Section 5,^[4] Article II, Republic Act (R.A.) No. 9165^[5] or the Comprehensive Dangerous Drugs Act of 2002.

After a buy-bust operation conducted on July 14, 2009, an Information for violation of Section 5, Article II of R.A. No. 9165 was filed against appellant reading:

That on or about the 14th day of July, 2009 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 [IO1] JOSEPH L SAMSON, who posed as buyer, METHYLAMPHETAMINE HYDROCHLORIDE (Shabu) weighing 4.5722 grams, 4.1451 grams, 4.2055 grams, 3.8220 grams, 3.4999 grams, 4.5061 grams & 4.7124 grams, a dangerous drug, without the corresponding license or prescription therefore, knowing the same to be such.

Contrary to Law.^[6]

On arraignment, appellant pleaded not guilty.^[7] Trial on the merits ensued after pre-trial.

The Prosecution's Version

Prosecution presented Maria Criser Abad, Intelligence Officer (IO) 2 Liwanag Sandaan, IO2 Joseph Samson and IO1 Darwin Reed.

On July 13, 2009, a confidential informant of IO2 Sandaan arrived at the Philippine Drug Enforcement Agency - Metro Manila Regional Office (PDEA-MMRO) and reported illegal drug activities of a certain Latif in Caloocan City. The informant alleged that Latif was engaged in selling *shabu* and capable of selling large amounts

of *bulto*.^[8] IO2 Sandaan instructed the informant to call Latif and order seven *bulto* of *shabu* and learned that each *bulto* would cost P27,000.00. The informant confirmed the transaction.

IO2 Sandaan called a team composed of IO1 Frederick Santos, IO1 Reed, IO1 Samson and IO1 Leverette Lopez and briefed them on the alleged drug activities in Caloocan City. At about 4:00 a.m. the following day, IO2 Sandaan conducted a briefing on the buy-bust operation. IO1 Samson was the designated poseur-buyer while IO1 Santos was the immediate back-up arresting officer. IO2 Sandaan handed two P500-bills as buy-bust money to IO1 Samson who marked the bills with his initials. They made it appear that the money was in a bundle placing one P500-bill at the top of the stack and another at the bottom.

They agreed that if the deal was consummated, IO1 Samson would remove his cap as the signal. IO2 Sandaan asked her team to prepare the Pre-Operation Report and Authority to Operate. Before leaving, the team coordinated with the Tactical Operation Center, the Quezon City Police and the Caloocan City Police.

The team with the informant went to Brgy. Malaria, Caloocan City on-board a red L-300 van. Upon arriving at around 9:30 a.m., IO1 Samson and the informant alighted from the van and proceeded to the designated area, an eatery near the barangay hall. The rest of the team stayed at a nearby burger place about eight meters away.

With the team positioned, the informant called Latif. A short male person, subsequently identified as appellant, arrived shortly after the call. The informant introduced IO1 Samson as the buyer and asked whether he had the item with him. Appellant replied in the affirmative and asked IO1 Samson if he brought the money. IO1 Samson replied in the affirmative and partly opened the plastic bag containing the money showing the top portion to appellant. He then informed appellant that he will only hand the money when he received the item.

Appellant pulled out from his pocket a transparent plastic wrapped with electrical tape and handed it to IO1 Samson. Upon receipt of the plastic packet with the crystalline substance, IO1 Samson grabbed appellant, introduced himself as PDEA agent, and removed his cap to notify the team. The team approached the target area and IO1 Santos assisted IO1 Samson in arresting appellant by handcuffing him and reading to him his constitutional rights.

There being a commotion caused by the arrest and spectators drawn to the sight, IO2 Sandaan called the driver to the target area. A person introducing himself as the barangay captain approached her and asked what had happened. IO2 Sandaan introduced herself as a PDEA agent and told him that they were arresting someone. She learned that appellant was a member of a Muslim drug group and a tricycle driver. Noting that she only had five agents with her she decided to promptly leave the area and conduct an inventory of the seized articles in Brgy. Pinyahan, Quezon City. En route, IO1 Samson maintained custody and possession of the items taken from appellant.

When the team arrived at the barangay hall of Brgy. Pinyahan, they opened the plastic bag and found seven sachets of *shabu*. These were included in the list along with electrical wrapper and plastic bag. An Inventory of Seized Properties/Items^[9]

was prepared by IO1 Samson in the presence of Barangay Kagawad Melinda Gaffud. Inventory was made and the evidence marked by IO1 Samson while IO1 Lopez photographed the same. After finalizing the inventory and markings, the team went back to the PDEA-MMRO to prepare the requests for laboratory examination and drug test examination. IO1 Samson personally brought the specimen and the request to the PDEA Crime Laboratory Service on the same day.

Upon receipt of the request, Maria Criser Abad, the Crime Laboratory Chemist on duty, personally performed the examination on the seven sachets containing white crystalline substance submitted by IO1 Samson. Appellant's urine sample was likewise submitted.

The evidence was found positive for Methamphetamine Hydrochloride.^[10] On the other hand, appellant's urine sample was found negative for the presence of *shabu* and marijuana.^[11]

The Defense's Version

The defense's evidence consisted of the testimonies of Jocelyn Garcia-Carrera, live-in partner of appellant, and appellant.

Appellant denied owning and possessing the plastic sachets containing the white crystalline substance. Appellant, a tricycle driver, asserts that he was working on that day. His services were contracted by a passenger who wanted a ride from Phase 12, Tala, Caloocan to Brgy. Malaria and back. Jocelyn decided to ride with appellant and the passenger to Brgy. Malaria because she wanted to buy medicines. When they arrived at Brgy. Malaria, the passenger alighted and told appellant to wait for him. While he was waiting with Jocelyn for the passenger's return, they were suddenly handcuffed by the members of the buy-bust team. He identified his passenger as one of the people who arrested him. Both he and Jocelyn were frisked. They took his wallet but the same was returned without his driver's license. Both he and Jocelyn then were placed inside a van. Jocelyn was let-off at Lagro, Quezon City. He was then asked if he knew a person named Latif which he answered in the negative.

They left Caloocan, stayed for a while at Quezon City Memorial Circle, and then proceeded to the barangay hall of Brgy. Pinyahan. It was when they were in the barangay hall of Brgy. Pinyahan that appellant saw for the first time the prohibited drugs.

In its November 27, 2012 Decision, the RTC found appellant guilty beyond reasonable doubt for violation of Section 5, Article II of R.A. No. 9165. The RTC ruled:

WHEREFORE, premises considered, judgment is hereby rendered declaring [appellant] Rolando Carrera y Imbat for Violation of Sec. 5, Art. II, R.A. 9165 **guilty** beyond reasonable doubt and is hereby sentenced to suffer the penalty of **life imprisonment and to pay a fine of Five Hundred Thousand (P500,000.00) Pesos, as provided for by law.**

The drugs subject matter of this case are hereby confiscated in favor of the government to be dealt with in accordance with law.

SO ORDERED.^[12]

On appeal, the CA in its June 10, 2014 Decision found appellant guilty of illegal possession of prohibited drugs under Section 11, Article II of R.A. No. 9165. It ruled:

WHEREFORE, the appeal is **DENIED**. The November 27, 2012 Decision of Caloocan City Regional Trial Court, Branch 127, in Criminal Case No. C-81635, finding [appellant] Rolando Carrera y Imbat guilty beyond reasonable doubt of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165 is hereby **MODIFIED** in that this Court instead finds [appellant] **GUILTY** beyond reasonable doubt of illegal possession of prohibited drugs penalized under Section 11, Art. II of [R.A. No.] 9165. Accordingly, [appellant] is sentenced to suffer the penalty of LIFE IMPRISONMENT and to **PAY A FINE OF FOUR HUNDRED THOUSAND PESOS (P400,000.00)**.

All other aspects of the assailed decision are maintained.

SO ORDERED.^[13]

In our February 23, 2015 Resolution, parties were notified that they may file their supplemental briefs. Both parties^[14] decided to forego the filing of such pleadings and opted to adopt the briefs they had submitted before the CA.

The issue for our consideration is whether appellant is guilty beyond reasonable doubt of the crime of illegal possession of illegal drugs.

We deny the appeal and affirm with modification the July 10, 2014 Decision of the CA.

We note at the outset that appellant was charged in the information with selling and delivering *shabu*^[15] and was apprehended during a buy-bust operation conducted by the PDEA.

**FEAR FOR LOSS OF LIFE AND LIMB
IS A SUITABLE JUSTIFICATION FOR NOT
CONDUCTING THE INVENTORY AND
MARKING AT THE NEAREST BARANGAY
HALL OR POLICE STATION**

Buy-bust operations are recognized in this jurisdiction as a legitimate form of entrapment of the persons suspected of being involved in drug dealings.^[16] In the prosecution of illegal sale of dangerous drugs in a buy bust operation, there must be a concurrence of all the elements of the offense: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the delivery of the thing sold

and the payment thereof. The prosecution must also prove the illegal sale of the dangerous drugs and present the *corpus delicti* in court as evidence.^[17]

We have stated that strict compliance with the prescribed procedure is required for the prosecution of illegal sale because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.^[18] It is thus important that the "chain of custody," provided under Section 21(1),^[19] Article II of R.A. No. 9165 and Section 21(a),^[20] Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165, be established to allay any suspicion of tampering. In a buy-bust operation, the failure to conduct a physical inventory and to photograph the items seized from the accused will not render his arrest illegal or the items confiscated from him inadmissible in evidence as long as the integrity and evidentiary value of the said items have been preserved.^[21]

We have recognized that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions. As the IRR states, "non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]" These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.^[22] It is thus the prosecution's burden to prove justifiable cause.^[23]

Here, IO1 Samson narrated:

- Q: So, what happened when you arrived in Bgy. Malaria at 9:30 a.m. of July 14, 2009?
- A: I went ahead together with the confidential informant, sir.
- Q: And how about the other members of your team, where did they go if any at that time?
- A: They dispatched in the vicinity, sir.
- Q: So, you said that you and the confidential informant went ahead, what happened after you arrived at that area?
- A: We waited for a while and then we contacted alias Latif, sir.
- Q: How did you contact alias Latif?
- A: Thru cell phone, sir.
- Q: So, what happened after the confidential informant contacted alias "Latif" thru cell phone?
- A: They said to wait for a while and then after a while a male person arrived, sir.
- Q: What did this male person do, if any?
- A: I was introduced by the confidential informant to him as buyer, sir.
- Q: What happened after that?
- A: And then I asked him if he has the shabu, sir.
- Q: What was his answer?
- A: He answered, "yes."
- Q: What else happened?
- A: He answered "yes" we have shabu and then he also asked