

## FIRST DIVISION

[ G.R. No. 195194, November 25, 2015 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. KAMAD AKMAD Y ULIMPAIN @ "MHADS" AND BAINHOR AKMAD Y ULIMPAIN @ "BHADS," ACCUSED-APPELLANTS.**

### DECISION

**PEREZ, J.:**

On appeal is the 19 February 2010 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03376 which affirmed the Decision dated 22 May 2008 of the Regional Trial Court (RTC), Malolos City, Branch 21 finding the accused-appellants Kamad Akmad y Ulimpain (Kamad) and Bainhor Akmad y Ulimpain (Bainhor) guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

#### **Factual Antecedents**

Kamad and Bainhor were charged before RTC, Branch 21, Malolos, Bulacan for violation of Section 5, Article II of R.A. No. 9165 in an information that reads:

That on or about the 25<sup>th</sup> day of September, 2003 in the [M]unicipality of Meycauayan, [P]rovince of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport dangerous drug consisting of one (1) heat-sealed transparent plastic bag of Methamphetamine Hydrochloride weighing 49.606 grams in conspiracy with each other.<sup>[2]</sup>

On 11 November 2003, Kamad and Bainhor, assisted by their counsel, pleaded not guilty to the crime charged. Pre-trial and trial thereafter ensued.

#### **Version of the Prosecution**

On 25 September 2003, senior Police Officer 1 Hashim Maung (SPO1 Maung) of the Philippine Drug Enforcement Agency (PDEA), Bulacan Provincial Office received a report from a civilian informant regarding the illegal drug activities of Kamad and Bainhor in the area of Meycauayan, Bulacan. The two were allegedly capable of disposing large volumes of *shabu* through consignment basis. SPO1 Maung instructed the civilian informant to set up a drug deal with the suspects.

At around 2:00 o'clock in the afternoon of the same date, the informant returned

and reported that he had already negotiated for the delivery of 50 grams of *shabu* worth Fifty Thousand Pesos (P50,000.00). The delivery would allegedly take place in front of McDonald's restaurant in *Barangay* Banga, Meycauayan, Bulacan.<sup>[3]</sup>

A team composed of Police Officer 3 Rolando Navarette (PO3 Navarette), as poseur-buyer, and SPO1 Maung and PO1 Co, as backup, was immediately formed to conduct a buy-bust operation.<sup>[4]</sup>

Upon arrival at the *locus criminis* at around 5:45 o'clock in the afternoon, the informant introduced PO3 Navarette to Kamad and Bainhor as an interested buyer. Kamad then took a medium-sized plastic sachet containing suspected *shabu* from his pocket and gave it to Bainhor, who, in turn, handed it to PO3 Navarette. Upon receipt of the plastic sachet, PO3 Navarette immediately executed their prearranged signal by scratching the back of his head with his right hand. SPO1 Maung and PO1 Co immediately rushed in and introduced themselves as PDEA operatives. The accused were informed of their rights and brought to the police station for disposition and documentation.<sup>[5]</sup>

PO3 Navarette testified that he marked the plastic sachet with his initial "RCN." He likewise testified that he prepared the request for the laboratory examination that was brought by SPO1 Maung to the crime laboratory together with the specimen, which later on tested positive for shabu.<sup>[6]</sup>

### **Version of the Defense**

Accused-appellants denied the accusations against them. They maintained that they were merely drinking softdrinks at the McDonald's fastfood restaurant in *Barangay* Banga, Meycauayan, Bulacan when three men suddenly approached them and poked a gun at Kamad. They were dragged out of the restaurant and forced to board a red car. Then, they were brought to a small house and were ordered to remove their clothings. They Were bodily searched but the three men did not find anything on them. Thereafter, they were brought to the provincial jail.

### **Ruling of the RTC**

On 22 May 2008, the trial court promulgated a Decision<sup>[7]</sup> finding accused-appellants guilty beyond reasonable doubt of the offense charged and sentenced them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (P500,000.00). The trial court ruled that the evidence presented by the prosecution successfully established the elements of illegal sale of a dangerous drug as accused-appellants were caught in *flagrante delicto* in a valid buy-bust operation. It noted that the defense of denial and frame-up offered by the defense cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

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

On intermediate appellate review, the CA found no reason to disturb the findings of the RTC and upheld its ruling. The appellate court agreed with the RTC that the testimony of the lone prosecution witness was sufficient to establish the culpability of accused-appellants. It also held that the apprehending officers complied with the

proper procedure in the custody and disposition of the seized drug and that the identity of the *corpus delicti* was properly preserved and established by the prosecution.<sup>[8]</sup>

### **Issue**

Whether the lower courts gravely erred in finding the accused-appellants guilty of the crime charged notwithstanding the prosecution's failure to prove their guilt beyond reasonable doubt.<sup>[9]</sup>

### **Our Ruling**

We deny the appeal.

Accused-appellants allege that PO3 Navarette testified that they were informed by a civilian informant that the accused-appellants can dispose large volume of *shabu* through consignment basis, which means that, at first, they will be given the *shabu* and on the next delivery, they will give the payment for the *shabu* earlier delivered. Accused-appellants maintain that the testimony defeated the prosecution's claim of illegal sale of drugs. They insist that no sale transaction was consummated between them and PO3 Navarette because one of the essential elements of a sale, *i.e.* the price certain in money or its equivalent is absent.<sup>[10]</sup>

The argument is erroneous. In the prosecution of a case of illegal sale of dangerous drugs, the absence of marked money does not create a hiatus in the evidence for the prosecution as long as the sale of dangerous drug is adequately proven and the drug subject of the transaction is presented before the court.<sup>[11]</sup> Neither law nor jurisprudence requires the presentation of any money used in the buy-bust operation.<sup>[12]</sup> What is material is the proof that the transaction or sale took place, coupled with the presentation in court of the *corpus delicti* as evidence.<sup>[13]</sup> In the instant case, the prosecution was able to establish the consummated transaction between the poseur-buyer and accused-appellants.

Moreover, we note that accused-appellants were charged with selling, trading, delivering, giving away, dispatching in transit and transporting dangerous drugs under Section 5, Article II of R.A. No. 9165.<sup>[14]</sup> The charge was not limited to the selling of dangerous drugs. The aforesaid provision of law punishes not only the sale but also the mere act of delivery of prohibited drugs after the offer to buy by the entrapping officer has been accepted by the seller. In the distribution of prohibited drugs, the payment of any consideration is immaterial. The mere act of distributing the prohibited drugs to others is in itself a punishable offense.<sup>[15]</sup>

Accused-appellants also submit that the lower courts failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.<sup>[16]</sup> They allege that the arresting team should have conducted a physical inventory of the item seized and took photographs thereof in their presence and in the presence of a representative each from the media, the Department of Justice, and any elected public official who shall further be required to sign copies of the inventory.<sup>[17]</sup> They further allege that the prosecution was not able to establish the unbroken chain of

custody of the dangerous drug when it failed to present SPO1 Maung, the one who prepared the request and delivered the alleged confiscated specimen to the PNP Crime Laboratory Service, Bulacan Provincial Office, Malolos, Bulacan.

We are not persuaded. The procedure to be followed in the custody and handling of the seized dangerous drugs is outlined in Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that 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[.]** (Emphasis supplied)

The last part of the aforequoted issuance provided the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.<sup>[18]</sup> This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.<sup>[19]</sup> What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused.<sup>[20]</sup> In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 was not faithfully observed, the guilt of the accused will not be affected.<sup>[21]</sup>

Here, the prosecution successfully established the unbroken chain of custody over the seized drug. After the arrest of the accused-appellants and the seizure of the suspected *shabu*, PO3 Navarette conducted an inventory in the presence of Princesita Gaspar and Ma. Theresa Lienado, officials of the barangay where the crime was committed. PO3 Navarette then marked the item with his initials, prepared the Receipt of Property Seized and had it signed by the *barangay* officials.