

FIRST DIVISION

[G.R. No. 203028, January 15, 2014]

**PEOPLE OF THE PHILIPPINES, VS. PLAINTIFF-APPELLEE,
JOSELITO BERAN Y ZAPANTA @ "JOSE", ACCUSED-APPELLANT.**

D E C I S I O N

REYES, J.:

On appeal is the Decision^[1] dated March 9, 2012 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 04466 affirming the conviction of accused-appellant Joselito Beran y Zapanta (Beran) rendered by the Regional Trial Court (RTC) of Manila, Branch 13, in a Decision^[2] dated April 19, 2010 in Criminal Case No. 03-218039, for violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, under an Information which reads, as follows:

The undersigned accuses JOSELITO BERAN y ZAPANTA @ JOSE of Viol. of Sec. 5, Art. II of Rep. Act No. 9165, committed as follows:

That on or about August 26, 2003, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale to a poseur buyer

one (1) pc. plastic sachet containing ZERO POINT ZERO THREE ZERO (0.030) gram of white crystalline substance known as SHABU containing meth[yl]amphetamine hydrochloride, which is a dangerous drug.

Contrary to law.^[3]

At his arraignment on November 5, 2003, Beran pleaded not guilty to the offense charged, and trial followed.

The Facts

According to the prosecution, between three and four o'clock in the afternoon of August 26, 2003,^[4] a confidential informant (CI) went to the District Anti-Illegal Drug (DAID) Office of the Western Police District (WPD) at the United Nations Avenue, Manila, and approached Police Officer 3 (PO3) Rodolfo Enderina (Enderina) to report that a certain Joselito Beran, alias "Jose," a pedicab driver, was selling prohibited drugs, particularly "*shabu*," in the vicinity of San Antonio Street in Tondo, Manila. PO3 Enderina relayed the information to Police Colonel Marcelino Pedroso, Chief of DAID-WPD, who then ordered him to form a buy-bust team to apprehend

the suspect. At around 5:00 p.m., the buy-bust team, composed of PO3 Enderina, PO3 Hipolito Francia, PO3 Benito Decorion (Decorion), PO2 Ernie Reyes, PO2 Alexander Delos Santos (Delos Santos) and PO3 Knowme Sia (Sia), who was to act as the poseur-buyer, arrived in Tondo on board an owner-type jeep and two scooters. In the jeep were PO3 Enderina, PO2 Delos Santos, and the CI, while the rest of the team rode in the scooters. They parked near the Gat Andres Hospital and proceeded on foot towards San Antonio Street. As arranged, PO3 Sia and the CI walked ahead of the others. PO3 Sia and the CI reached the target area first, and there the CI saw Beran standing some 10 meters away near a "*poso*" or deep-well.

After recognizing and pointing Beran to PO3 Sia, the CI approached him and the two men conversed briefly. Then the CI signaled to PO3 Sia to join them, and he introduced PO3 Sia to Beran, who then asked the CI how much PO3 Sia was buying. The CI replied, "*piso lang*," or P100, and Beran took out something from his pocket, a small, heat-sealed plastic sachet, which he then handed to PO3 Sia. PO3 Sia took the sachet and pretended to examine it discretely, after which he indicated to Beran that he was satisfied with its content. He then took out a marked P100 bill which he handed to Beran; all this time the back-up members of the buy-bust team were watching from strategic locations around the vicinity.

Thereupon, PO3 Sia executed the pre-arranged signal of touching his hair to signify to the back-up cops that the buy-bust sale of *shabu* had been consummated, even as he then placed Beran under arrest. The back-up operatives quickly converged upon Beran, with PO2 Delos Santos arriving first, to whom PO3 Sia then handed over the custody of Beran, while he kept the plastic sachet. The buy-bust team brought Beran to the DAID-WPD office, where PO3 Sia marked the confiscated plastic sachet with the initials of Beran, "JB." He also recorded the incident in the police blotter, and accomplished the Booking Sheet and Arrest Report (Exhibit F and F-1), and the Request for Laboratory Examination (Exhibit G and G-1). He later brought the seized plastic sachet to the WPD Crime Laboratory for examination, where after testing it was found to contain the prohibited drug methylamphetamine hydrochloride or *shabu*.^[5]

In his defense, Beran vehemently denied the above incident. Testifying alone in his defense, he asserted that on August 26, 2003 at around 2:00 p.m., while he was resting alone upstairs in his house, five WPD policemen arrived and ordered him to come with them. He resisted and asked why they were arresting him, but without apprising him of his constitutional rights they handcuffed and forcibly boarded him in an owner-type jeep and brought him to the WPD Headquarters. There, two of his arrestors, PO3 Francia and PO3 Sia, demanded from him the amount of P20,000.00 in exchange for his release without any charge. But he could not produce the amount they asked, and they trumped up a charge against him of illegal sale of *shabu*.^[6]

The trial of Beran took all of seven years to wind up, mainly on account of many postponements allegedly due to supervening illnesses or reassignments of the subpoenaed arresting officers. The prosecution was able to present two witnesses, PO3 Francia and PO3 Sia, but only PO3 Sia gave a witness account of the drug buy-bust itself. PO3 Francia admitted that he served as a mere look-out to prevent any intruder from interfering in the buy-bust operation, and that he did not witness the buy-bust transaction itself. As for PO3 Decorion, also a member of the buy-bust

team, the RTC per its Order^[7] dated July 29, 2009 agreed to dispense with his testimony after the parties stipulated that as the designated driver of the buy-bust team, he did not see the actual exchange of drug and money between Beran and PO3 Sia, nor did he witness the actual arrest of Beran by PO3 Sia.

Ruling of the RTC

On April 19, 2010, the RTC of Manila, Branch 13, rendered its judgment,^[8] the dispositive portion of which reads:

THEREFORE, premises considered and the prosecution having established to a moral certainty the guilt of the accused **JOSELITO BERAN y ZAPANTA @ JOSE** of the crime charged, this Court in the absence of any aggravating circumstance hereby sentences the Accused to LIFE IMPRISONMENT and to pay the fine of five hundred thousand pesos ([P]500,000.00), without any subsidiary imprisonment in case of insolvency.

In the service of his sentence, the actual confinement under detention during the pendency of this case shall be deducted from the said prison term in accordance with Article 29 of the Revised Penal Code.

The evidence presented is ordered transferred to the Philippine Drug Enforcement Agency (PDEA) for destruction.

SO ORDERED.^[9]

Beran went up to the CA to interpose the following alleged errors in the RTC decision, to wit:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [BERAN] DESPITE THE ILLEGALITY OF HIS ARREST AND THE INADMISSIBILITY OF THE ALLEGED CONFISCATED PROHIBITED DRUG.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING [BERAN] GUILTY BEYOND REASONABLE DOUBT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE IDENTITY OF THE PROHIBITED DRUG.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING [BERAN] DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165.^[10]

Ruling of the CA

In affirming *in toto* the RTC, the CA ruled that Beran was caught in *flagrante delicto* as a result of a valid and legitimate buy-bust operation, an entrapment to apprehend law breakers while in the act of executing their criminal plan.^[11] Relying solely on the testimony of PO3 Sia, it found that Beran sold the prohibited drug *shabu* to an undercover buyer, PO3 Sia; that Beran was arrested at the moment of the consummation of the sale transaction and immediately brought to the DAID-WPD along with the sachet of illegal drug confiscated from him; that when the substance was subjected to chemical analysis by the WPD Drug Laboratory, the content thereof was shown to be methylamphetamine hydrochloride or *shabu*.

The CA further held that the arrest of Beran by PO3 Sia without warrant was valid under Section 5(b) of Rule 113 of the Revised Rules on Criminal Procedure, which provides that "a police officer or a private person may, without a warrant arrest a person when an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it." It also cited Section 5(a) of Rule 113, wherein it provides that "a police officer can arrest a person without warrant when in his presence the person to be arrested has committed, is actually committing, or is attempting to commit an offense."

Quoted below at length are pertinent portions of the testimony of PO3 Sia which according to the CA have proved beyond reasonable doubt the material facts attending the buy-bust and establishing the guilt of Beran:

=====
DIRECT EXAMINATION
CONDUCTED BY
ACP LIBERTAD RASA ON WITNESS
PO3 KNOWME SIA
=====

X X X X

Q: How did you know that there was that informant who arrived at your office giving information about drugs activities of a certain Beran?

A: PO3 Rodolfo Enderina formed a team in DAID office, ma'am.

Q: Did you know why Enderina formed a group at DAID?

A: He relayed to us that we have [an] Anti-Illegal [D]rugs [O]peration, ma'am.

Q: That you will have [an] Anti-Illegal Drugs Operation, where and against whom?

A: Against one Joselito Beran alias Jose, ma'am.

Q: Where?

A: In the area of San Antonio Street, Tondo, Manila.

Q: Was there anytime that you saw them in front at your office when he relayed the information to Enderina?

A: Yes, ma'am.

Q: What time of the day or the night was that?

A: Between 3-4 pm of August 26, 2003, ma'am.

Q: And what did your team leader Rodolfo Enderina do as soon as he receive[d] that information?

A: He formed his men and then he directed all of us and place[d] the confidential information for interrogation, ma'am.

Q: As a ma[t]ter of standard operating procedure, what does [an] operative of SAID or DAID do before launching a buy-bust operation?

A: First, there must be an information to be received, [then] there was a plan [of] operation and then the documents are required to [be] accomplished prior to [the] conduct [of] a buy-bust operation, ma'am.

Q: What documents, if any, were you required to prepare prior to your operation?

A: Our dispatch record.

Q: Do you have a copy of this dispatch record?

A: Yes, ma'am.

Q: Can you show it to the Court?

A: It is [with] the custodial of DAID, ma'am.

x x x x

ACP Rasa:

Q: Aside from the [dispatch] record, what other documents did you prepare?

A: The buy-bust money, ma'am.

Q: Do you have the buy-bust money with you?

A: I will bring it on the next hearing, ma'am.

Q: How much buy-bust money did you prepare?

A: [P]100.00, ma'am.

Q: Who supplied that [P]100.00 buy-bust money?

A: Our team leader, ma'am.

Q: Who is your team leader?

A: PO3 Rodolfo Enderina, ma'am.

Q: Aside from the [dispatch] record, the buy-bust money, what other preparations did you do before launching on the operation of buy-bust against one Joselito Beran alias Jose?

A: There was a preparation of Pre-Operation Report and Coordination Sheet, however, we cannot fax to the PDEA because the PDEA [fax] at that time was not fully operational, ma'am.

Q: What other documents aside from those already mentioned did you prepare?

A: That's all, ma'am.

Q: And what were the other instructions given to you by the team leader, Rodolfo Enderina?

A: During our briefing, I was then chosen as the designated poseur-buyer, ma'am.

Q: What else?

A: The marked money was marked by me and then during the briefing, it was agreed that the pre-arranged signal was to touch my hair as indication that the deed was done, ma'am.

x x x x

Q: What time did you proceed to San Antonio?

A: Around 5:00 of August 26, 2003, ma'am.

Q: How many vehicles [did you use]?

A: We utilized one (1) owner type jeep and [the] other[s] were on their respective motorcycle or scooter, ma'am.