

FIRST DIVISION

[G.R. No. 205227, April 07, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. MARCO P. ALEJANDRO, ACCUSED-APPELLANT.

D E C I S I O N

VILLARAMA, JR., J.:

On appeal is the Decision^[1] dated November 11, 2011 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03483 which affirmed the judgment^[2] of the Regional Trial Court (RTC) of Muntinlupa City, Branch 204 convicting appellant of illegal sale of methamphetamine hydrochloride (*shabu*) under Section 5, Article II of Republic Act (R.A.) No. 9165 (The Comprehensive Dangerous Drugs Act of 2002). In its Resolution^[3] dated March 14, 2012, the CA denied the motion for reconsideration filed by appellant.

The Facts

Marco P. Alejandro (appellant), along with Imelda G. Solema and Jenny V. del Rosario, were charged with violation of Section 5, Article II of R.A. No. 9165 under the following Information:

That on or about the 12th day of July, 2006, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, not being authorized by law did then and there willfully, unlawfully and feloniously sell, trade deliver and give away to another, Methamphetamine Hydrochloride, a dangerous drug weighing 98.51 grams contained in one (1) heat-sealed transparent plastic sachet, in violation of the above-cited law.

Contrary to law.^[4]

When arraigned, all three accused pleaded not guilty. Upon demurrer to evidence filed by accused Jenny del Rosario, the trial court rendered judgment acquitting her of the crime charged considering that her mere presence in the car used by appellant is not indicative of conspiracy in the sale of illegal drugs.^[5]

At the pre-trial, the parties stipulated on the following:

1. The identity of the accused as the persons charged;
2. The jurisdiction of this Court over the persons of the accused;

3. Police Inspector Ruben Mamaril Apostol Jr. is a member of a PNP Crime Laboratory Office as of July 12, 2006 and he is an expert in Forensic Chemistry;
4. That a request for laboratory examination was made for the specimens allegedly confiscated from the accused;
5. The existence and authenticity of the request for examination of the seized items and Request for a drug test on the persons of the accused;
6. That pursuant to the requests for the drug test and examination of the specimens, the corresponding Regional Crime Laboratory Office, Calabarzon issued two (2) chemistry reports, D-267-06 and CRIM[D]T-286-06 that subject specimens submitted are positive for methamphetamine hydrochloride; and
7. That only a representative sample of the specimens submitted were examined by the Forensic Chemist which consist of one (1) transparent sachet containing white crystalline substance in black and red markings.^[6]

Version of the Prosecution

The prosecution presented the following factual milieu based on the testimonies of SPO1 Jaime A. Cariaso (*poseur-buyer*), SPO1 Norman Jesus P. Platon and Police Inspector Ruben M. Apostol, Jr. (Forensic Chemical Officer):

In the morning of July 11, 2006, a Confidential Informant (CI) went to the Philippine Drug Enforcement Agency (PDEA) Regional Office 4-A (CALABARZON) at Camp Vicente Lim in Calamba City, Laguna. The CI informed Regional Director P/Supt. Raul L. Bargamento that he was able to set up a deal with a certain "Aida" who directed him to look for a buyer of 100 grams of *shabu* for the price of P360,000.00.^[7]

Immediately, P/Supt. Bargamento instructed Police Chief Inspector Julius Ceasar V. Ablang to form a team who will conduct a buy-bust operation. PCI Ablang organized the team composed of eleven police officers and made the proper coordination with PDEA. Since the target area is situated in Barangay Bayanan, Muntinlupa City, Metro Manila, the team likewise obtained the requisite "Authority to Operate Outside AOR".^[8] During the briefing, SPO1 Cariaso was designated as poseur-buyer while SPO1 Platon will be his back-up arresting officer. Four pieces of five hundred peso (P500) bills were then prepared and marked by SPO1 Cariaso. The said bills stacked on the boodle money were placed inside SPO1 Cariaso's belt bag. On the same day, SPO1 Cariaso and SPO1 Platon, along with the CI, conducted a surveillance of the house of "Aida" and vicinity. Prior to these preparations, the CI had contacted "Aida" through her cellphone and arranged the 2:00 p.m. meeting/sale transaction the following day.^[9]

The next day, July 12, 2006, at around 12:00 noon, the team accompanied by the CI boarded two service vehicles and proceeded to the target area. They arrived at Barangay Bayanan at 1:45 p.m. SPO1 Cariaso and the CI parked the Toyota Revo in front of the house of "Aida" while SPO1 Platon and the rest of the team, who rode on another vehicle (Isuzu Crosswind), waited at a distance. As agreed during the

briefing, SPO1 Platon positioned himself in a spot where he could see SPO1 Cariaso. The other police officers posted themselves where they could see SPO1 Platon as the latter will wait for a "missed call" from SPO1 Cariaso.^[10]

SPO1 Cariaso and the CI alighted from the Revo and went to the gate of the house of "Aida". They called the attention of a woman whom the CI identified as "Aida". The woman came out of the house and the CI introduced SPO1 Cariaso to her as the buyer of *shabu*. After the introduction, the CI left. The woman asked SPO1 Cariaso where the money is and he opened his belt bag to show her the money. SPO1 Cariaso in turn asked her where the *shabu* is and she replied that he should wait for Marco (appellant). SPO1 Cariaso and the woman then went inside the Revo and waited for appellant. After about five minutes, a Toyota Vios arrived and parked in front of the Revo. The woman told SPO1 Cariaso that the driver of the Vios was appellant.^[11]

Appellant alighted from the Vios and went inside the Revo. The woman introduced appellant to SPO1 Cariaso as the buyer. After appellant ascertained that SPO1 Cariaso had the money with him, he went down and got something from the Vios. When appellant returned, he was carrying an item wrapped in newspaper. Inside the Revo, appellant uncovered the item and SPO1 Cariaso saw a transparent plastic sachet containing white crystalline substance which appellant handed to him. Appellant then demanded for the money. SPO1 Cariaso gave appellant the belt bag containing the marked bills and boodle money and quickly pressed the call key of his cellphone, the pre-arranged signal for the team that the sale had been consummated.^[12]

Within fifteen seconds, SPO1 Platon rushed towards the Revo and the rest of the team followed. The team introduced themselves as PDEA agents. SPO1 Cariaso arrested appellant and the woman ("Aida") who was later identified as Imelda G. Solema. Meanwhile, SPO1 Platon arrested the woman passenger in the Vios who was later identified as Jenny del Rosario. The seized plastic sachet containing white crystalline substance was marked by SPO1 Cariaso with his initials "EXH. A J.A.C. July 12, 2006" and signed it at the bottom. SPO1 Cariaso also recovered the marked P500 bills and boodle money from appellant. The three accused and the confiscated items were brought to the PDEA Regional Office in Camp Vicente Lim.^[13]

At the PDEA regional office, appellant and his co-accused were booked and the confiscated items were inventoried by the investigator in the presence of SPO1 Cariaso, a media representative and a barangay councilor. A request for laboratory examination of the seized transparent plastic sachet containing white crystalline substance, weighing 98.51 grams, was prepared and signed by P/Supt. Bargamento. There were also requests made for the physical examination and drug test of the arrested persons. The request for laboratory examination and the specimen marked "EXH. A J.A.C. July 12, 2006" were brought by SPO1 Cariaso to the Philippine National Police (PNP) Regional Crime Laboratory Office 4A. Result of the chemical analysis performed by Pol. Insp. Apostol, Jr. showed that the said specimen is positive for methamphetamine hydrochloride or *shabu*. Appellant and his co-accused likewise were found positive for methamphetamine based on screening and confirmatory test done on their urine samples.^[14]

The prosecution presented and offered the following evidence: (1) Pre-Operation Report dated July 12, 2006 submitted by PCI Ablang (Team Leader) and noted by P/Supt. Bargamento; (2) Authority to Operate Outside AOR dated July 12, 2006 granted by PDEA Police Chief Inspector Emmanuel Salvador L. Enriquez; (3) Certificate of Coordination dated July 12, 2006 from PDEA; (4) Request for Laboratory Examination dated July 12, 2006 of specimen marked "EXH A J.A.C. July 12, 2006" with signature of poseur-buyer; (5) Request for Drug Test of arrested persons dated July 12, 2006 signed by P/Supt. Bargamento; (6) Request for Physical/Medical Examination of arrested persons signed by P/Supt. Bargamento; (7) Chemistry Report No. D-267-06 dated July 13, 2006 submitted by Pol. Insp. Apostol, Jr. showing positive findings on specimen marked "EXH A J.A.C. July 12, 2006"; (8) Chemistry Report No. CRIMDT-268-06 to 270-06 submitted by Pol. Insp. Apostol, Jr. showing positive findings on the urine samples taken from appellant and his co-accused; (9) Certification dated July 12, 2006 issued by Medico-Legal Officer Dr. Roy A. Camarillo of the PNP Regional Crime Laboratory 4A stating that "there are no external signs of recent application of any form of trauma noted during the time of examination" on the persons of appellant and his co-accused; (10) Certificate of Inventory prepared by PCI Ablang and signed/witnessed by a media representative (Lyka Manalo) and Barangay Councilor (Jerusalem Jordan); (11) One transparent plastic sachet containing white crystalline substance with markings "EXH A J.A.C. July 12, 2006" and signed by poseur-buyer SPO1 Cariaso; (12) Affidavit of Poseur-Buyer dated July 13, 2006 executed by SPO1 Cariaso; (13) Affidavit of Back-Up/Arresting Officer dated July 13, 2006 executed by SPO1 Platon; (14) Booking Sheet and Arrest Reports of appellant and his co-accused containing their fingerprints, but which only Imelda Solema signed while appellant and Jenny del Rosario refused to sign; and (15) four pieces P500 bills marked money with serial numbers CM180235, YA867249, ZS853938 and ZW337843.^[15]

Version of the Defense

Appellant's defense is anchored on the claim that no buy-bust took place. He testified that on July 12, 2006, at around 1:30 p.m., he went to the house of his co-accused Imelda Solema whom he knows is called "Im". The purpose of his visit to Im was to rent her apartment because his girlfriend is arriving from Japan. Along the way, he saw Jenny del Rosario with her baby and let them rode on his car (Vios) as they were going the same way. Upon reaching Im's house at 1:45 p.m., he parked his vehicle in front of said house but a barangay *tanod* told him not to park there as it was a towing area. And so he parked his Vios inside the garage of Im's house which has a steel gate and knocked at its door. Meanwhile, Jenny del Rosario was left inside the Vios.^[16]

Upon entering the house of Im, appellant claimed he was immediately grabbed by a man who made him lie down. He would later learn at PDEA that the man's name is "Toto" and his female companion is Ma'am Carla. These PDEA agents took his belt bag containing cash (P48,000) and his jewelry. He was also handcuffed and brought inside his car where Toto, Ablang and a driver also boarded. He saw SPO1 Cariaso for the first time at the PDEA office. He likewise does not know SPO1 Platon. At the PDEA office, appellant and his co-accused were photographed after they were made to change clothes. Appellant further claimed that PCI Ablang demanded money (P1 million) from him in exchange for his release. When he was unable to give such amount, they just detained him and his co-accused. Their urine samples were taken

and submitted for drug testing.^[17]

As to the *shabu* allegedly seized from him in a buy-bust operation, appellant vehemently denied having such drug in his possession at the time. They have already been detained for two days when they were photographed with the said item. The taking of photographs was done in the presence of PDEA personnel, barangay officials from Canlubang and the media.^[18]

On cross-examination, appellant explained that he had talked to his lawyer regarding the filing of a case against the PDEA officers who tried to extort money from him but his lawyer suggested they should first do something about this case. He added that he does not know of any reason why SPO1 Cariaso is accusing him of selling an illegal drug.^[19]

Imelda G. Solema testified that on July 12, 2006 between 1:00 to 2:00 in the afternoon, she was inside her house watching TV together with her seven-year-old son when some persons carrying long firearms arrived asking if she is "Aida". She shouted to them that she is not "Aida" but "Im." These armed persons searched her house for *shabu* and when she shouted she was pushed into a chair. After ten minutes of searching, nothing was found in her house. When somebody knocked on the door, one of the armed men opened it and they saw appellant. They pulled appellant inside, poked a gun at him, made him lie down and handcuffed him. She and appellant were brought outside the house and boarded into the Revo. They waited for the other car for the armed men to board appellant there. Thereafter, they were brought to the PDEA office in Canlubang where they were detained.^[20]

On cross-examination, Imelda Solema admitted that appellant was her friend even prior to their arrest because he was the "*kumpare*" of her sister. Appellant went to her house at the time as they had an agreement that he will rent one of the units of her apartment.^[21]

The defense presented another witness, Rowena S. Gutierrez, a *siomai/sago* vendor who allegedly saw what transpired at the house of Imelda Solema from a distance of 6-8 meters. She testified that on July 12, 2006 at past 2:00 p.m., a red car immediately parked in front of the house of Imelda Solema, whom they call "Im." A man and a woman (whom she later learned were police officers) alighted from said car and entered the house of Im. Not too long after, a silver car also arrived which was supposed to park in the area but there were barangay tanods and so it parked instead in the garage of the mother of Im. She later learned that the driver of the silver car was appellant. Appellant went out of his car and proceeded to Im's house. When appellant was already inside Im's house, two vehicles (Revo and Crosswind) suddenly arrived and there were armed men who alighted from said vehicles and entered Im's house. Thereafter, she heard Im crying as she was being held by a woman and a man. The armed men forced Im and appellant into the Revo. The persons left were a female and a child who eventually drove the silver car.^[22]

On cross-examination, the witness admitted that the relatives of her friend Im asked her to testify because the others who also saw the incident were afraid to do so.^[23]