

## SECOND DIVISION

[ G.R. No. 200358, April 07, 2014 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. GERRY YABLE Y USMAN, ACCUSED-APPELLANT.**

### D E C I S I O N

**PEREZ, J.:**

For review of this Court is the appeal filed by Gerry Yable y Usman (Gerry) assailing the 23 May 2011 Decision<sup>[1]</sup> of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03303. The CA affirmed the Decision of the Regional Trial Court (RTC), Branch 78, Quezon City finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002.

#### The Antecedents

On 3 May 2005, an Information was filed against Gerry before the Regional Trial Court (RTC), Quezon City for violation of Section 5, Article II of R.A No. 9165, to wit:

That on or about the 27th day of April 2005, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did then and there willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, one (1) sachet of white crystalline substance containing zero point fifteen (0.15) gram of [Methamphetamine] Hydrochloride, a dangerous drug.<sup>[2]</sup>

### COUNTERSTATEMENT OF FACTS

#### Version of the Prosecution

Acting on a tip given by a confidential informer, the Quezon City Anti-Drug Abuse Council (QC-ADAC) assembled a team to conduct a buy-bust operation in Payatas area, where a certain Gerry Yable was alleged to be selling illegal drugs

Police Officer 1 Peggy Lynne Vargas (PO1 Vargas) who was designated to act as poseur-buyer was given a Five Hundred Peso bill representing the buy-bust money. To mark the buy-bust money, she placed her initials on the forehead of Senator Benigno Aquino, Jr.<sup>[3]</sup> It was planned that PO1 Vargas would be introduced by the informer to Gerry as a buyer. After the exchange of money and *shabu*, PO1 Vargas would scratch her forehead to indicate the consummation of the sale and as signal for the back-up team to approach and apprehend Gerry. A pre-operation report was prepared to coordinate the buy-bust operation with the Philippine Drug Enforcement Agency (PDEA).<sup>[4]</sup>

At 12:00 o'clock noon of 27 April 2005, the team proceeded to the target area. PO1 Vargas and the informant met Gerry at Lower Yasmin Street, Payatas, Quezon City. After being introduced, Gerry allegedly asked PO1 Vargas if she will score and the latter answered "five pesos (Php 5.00) only."<sup>[5]</sup> Gerry asked for the money and took from his pocket the plastic sachet containing *shabu* and handed it over to PO1 Vargas. Thereafter, PO1 Vargas made the pre-arranged signal by scratching her forehead and the back-up policemen approached and introduced themselves to Gerry. PO2 Joseph Ortiz (PO2 Ortiz) searched Gerry and found in his pocket the five hundred peso (Php500.00) bill which contained the "PV" initials.<sup>[6]</sup> PO2 Ortiz apprised Gerry of his right to remain silent and his right to engage the services of a lawyer because they would be filing a case for violation of R.A. No. 9165 against him. Gerry chose to remain silent and the team boarded him in their vehicle. He was brought to the City Hall of Quezon City to be turned over to the police investigator.<sup>[7]</sup>

### **Version of the Defense**

Gerry denied the charges against him. He maintained that he was in a store to buy rice when the police officers passed by while pursuing a certain "Mags." He alleged that he was approached by the policemen and was asked where "Mags" was. When he answered in the negative, he was made to ride on a motorcycle and was brought to Quezon City Hall.<sup>[8]</sup> He further alleged that the witnesses, however, positively identified him as the one selling *shabu* at Lower Yasmin Street and was the one apprehended by Police Officers Vargas and Ortiz.

### **Ruling of the RTC**

On 28 March 2008, the trial court rendered a Decision finding Gerry guilty beyond reasonable doubt of the offense charged. The RTC found that the prosecution succeeded in proving beyond reasonable doubt the guilt of Gerry for violation of Section 5, Article II, R.A. No. 9165. It ruled that the evidence presented during the trial adequately established that a valid buy-bust operation was conducted by the operatives of the QC-ADAC, in coordination with PDEA. On the other hand, Gerry failed to present substantial evidence to establish his defense of frame-up. The RTC ruled that frame-up, as advanced by Gerry, is generally looked upon with disfavor on account of its aridity and the facility with which an accused could concoct the same to suit his defense.<sup>[9]</sup> With the positive identification made by the government witnesses as the perpetrator of the crime, his self-serving denial is worthless.<sup>[10]</sup> Since there was nothing in the record to show that the arresting team and the prosecution witnesses were actuated by improper motives, their affirmative statements proving Gerry's culpability was respected by the trial court.

With caution by the court because it is easy to contrive and difficult to disprove. Like *alibi*, frame-up as a defense had invariably been viewed with disfavor as it is common and standard line of defense in most prosecutions arising from violation of the Dangerous Drugs Act.<sup>[11]</sup>

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

The CA affirmed the Decision of the RTC, upon a finding that all of the elements of

illegal sale of dangerous drug have been sufficiently established by the prosecution. It found credible the statements of prosecution witnesses PO1Vargas and PO2 Ortiz about what transpired during and after the buy-bust operation. Further, it ruled that the prosecution has proven as unbroken the chain of custody of evidence. The CA likewise upheld the findings of the trial court that the buy-bust operation conducted enjoyed the presumption of regularity, absent any showing of ill-motive on the part of the police operatives who conducted the same.

The CA likewise found Gerry's defenses of denial and frame-up unconvincing and lacked strong corroboration.

Hence, this appeal.

### **ISSUE**

Gerry raised in his brief the following errors on the part of the appellate court, to wit:

The trial court gravely erred in finding the accused-appellant guilty beyond reasonable doubt of the crime charged.

The trial court gravely erred in convicting the accused-appellant despite the prosecution's failure to establish the chain of custody of the alleged confiscated drug.<sup>[12]</sup>

### **Our Ruling**

The appeal is bereft of merit.

Gerry submits that the trial court and the CA 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>[13]</sup> Gerry alleges that no physical inventory or photograph was conducted at the crime scene or in his presence. Instead, the marking of the confiscated drug was done in front of the investigator at the police precinct. Such lapses on the part of the apprehending officers raises doubt on whether the *shabu* submitted for laboratory examination and subsequently presented in court as evidence, was the same one confiscated from Gerry.<sup>[14]</sup>

Relevant to Gerry's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as outlined in Section 21, paragraph 1, Article II, R.A. No. 9165, which reads:

- (1) The apprehending 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