

THIRD DIVISION

[G.R. No. 209785, June 04, 2014]

**PEOPLE OF THE PHILIPPINES PLAINTIFF-APPELLEE, VS.
MARLON ABETONG Y ENDRADO, ACCUSED-APPELLANT.**

DECISION

VELASCO JR., J.:

The Case

This treats of accused-appellant Marlon Abetong's appeal from the June 28, 2013 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01357 affirming his conviction beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Accused-appellant was charged in an Information^[2] that reads:

That on or about the 22nd day of August 2003, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, not being authorized by law to sell, trade, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did, then and there wilfully, unlawfully and feloniously sell, deliver, give away to a police poseur buyer in a buy-bust operation one (1) heat-sealed transparent plastic packet containing methylamphetamine hydrochloride or shabu weighing 0.02 gram(s) more or less, in exchange for a price of P100.00 in mark money, consisting of two (2) P50.00 bill with Serial Nos. BZ323461 and CN467805, in violation of the aforementioned law.

Act contrary to law.

During trial, prosecution witness Police Officer 3 Wilfredo Perez (PO3 Perez) of the Police Station 1, Bacolod City Police Office, testified that, in the morning of August 22, 2003, their office received information that a certain alias "Cano," later identified as accused-appellant, was selling drugs in his house at Purok Sigay, Barangay 2, Bacolod City. Police Senior Inspector Jonathan Lorilla (Inspector Lorilla) then called for a briefing for the conduct of a buy-bust operation against "Cano" and designated PO3 Perez as the poseur-buyer. In preparation for the operation, PO3 Perez initialled two (2) PhP 50 bills bearing Serial Nos. CN467805 and BZ323461, which were going to be used as marked money. After recording the details of the preparation in the police blotter, PO3 Perez and the informant proceeded to the address while Inspector Lorilla and some of his personnel tailed in a car.

Upon arrival at the target area, PO3 Perez and the asset knocked on the door and were greeted by accused-appellant, who asked the purpose of the visit. PO3 Perez answered that he wanted to buy PhP 100 worth of *shabu*. The two were ushered in by accused-appellant and once inside, PO3 Perez saw three persons sitting around a table, passing to one another a tooter and allegedly engaged in a pot session. The three were identified as Ricky Bayotas, Reynaldo Relos and Archie Berturan. PO3 Perez then drew two PhP 50 bills marked "WCP" and handed them over to accused-appellant who in turn gave him a plastic sachet containing white crystalline substance from his right pocket.

After receiving the plastic sachet, PO3 Perez introduced himself as a police officer and signalled his back-up to effect the arrest of the four individuals. The suspects attempted to flee but their plans were foiled by the timely arrival of the other policemen. They were then brought to the police station where their arrest and the list of the items confiscated from them were entered in the police blotter. From their arrest until the items seized were transmitted to the Philippine National Police (PNP) Crime Laboratory, the pieces of evidence were allegedly under PO3 Perez's custody. In his testimony, PO3 Perez stated that he kept the items inside the evidence locker in the Drug Enforcement Unit Office, to which only Inspector Lorilla has a key.

On August 25, 2013, PO3 Perez brought the sachet containing crystalline substance and the tooter to the PNP Crime Laboratory for testing. The items were received by Inspector Augustina Ompoy (Inspector Ompoy), the Forensic Chemical Officer of the Regional PNP Crime Laboratory 6, Camp Delgado, Iloilo City, who then performed the necessary examinations on the items recovered.

Inspector Ompoy testified for the prosecution on the receipt in the PNP Crime Laboratory of the letter-request for laboratory examination of the specimens. According to her, she conducted quantitative and qualitative tests and found that the white crystalline substance in the plastic sachet tested positive for methamphetamine hydrochloride, a dangerous drug, weighing 0.04 gram while the tooter tested negative for any prohibited drug.

Accused-appellant, for his part, raised that he was illegally arrested, a defense corroborated by Crispin Mejrada, Jr., a friend and neighbor of the former. As succinctly put by the trial court:^[3]

Testifying in his defense, accused Marlon Abetong declared being at home in Purok Sigay, Brgy. 2, Bacolod City at 11:50 AM of August 22, 2003, sweeping the floor, alone. Suddenly, a male person entered the open door and held him by his pants. When Marlon asked what his fault was, the man answered to just go with him. The person was in civvies, fair-skinned and tall; he did not introduce himself. Marlon was handcuffed while they were at the foot-walk heading to 26th Aguinaldo Street, and searched, but nothing was recovered from him except his money – P9.00. Accused was made to board a vehicle at Aguinaldo; three handcuffed persons were inside. All four were brought to BAC-Up 2 and placed in a cell. Abetong was not informed of the cause of his arrest; no drugs were presented to him. He knew of the charge – Violation of Section 5, R.A. 9165 – only during arraignment in court.

The Ruling of the RTC

On May 25, 2011, the Regional Trial Court (RTC), Branch 47 in Bacolod City did not give credence to accused-appellant's defense and rendered a Decision^[4] convicting him of the crime charged. To wit:

WHEREFORE, finding accused Marlon Abetong y Endrardo **guilty** beyond reasonable doubt of Violation of Section 5, Article II of R.A. 9165 (Sale, Delivery, etc. of Dangerous Drugs), as charged, judgment is hereby rendered sentencing him to suffer **Life Imprisonment** and to pay a fine of P500,000.00. He is also to bear the accessory penalty prescribed by law. Costs against accused.

The subject one (1) sachet of methamphetamine hydrochloride/shabu (Exh. "B-3-A") recovered/bought from him being a dangerous drug, the same is hereby ordered confiscated and/or forfeited in favor of the government, and to be forthwith delivered/turned over to the Philippine Drug Enforcement Agency (PDEA) provincial office for immediate destruction or disposition in accordance with law.

The immediate commitment of accused to the national penitentiary for service of sentence is likewise further ordered.

SO ORDERED.

Aggrieved, accused-appellant appealed to the CA, raising the sole issue that his guilt was not proved beyond reasonable doubt. He maintained that, assuming without conceding the validity of the buy-bust operation, the prosecution failed to sufficiently prove that the integrity of the evidence was preserved. Raising non-compliance with Sec. 21 of RA 9165, he argued, among others: (1) that the markings on the items seized do not bear the date and time of the confiscation, as required; (2) that about three days have passed since the items were confiscated before they were brought to the crime laboratory; and (3) that there was neither an inventory nor a photograph of the recovered plastic sachet. Accused-appellant likewise hinged his appeal on the fact that Inspector Lorilla, who had the only key to the evidence locker, did not testify during trial.

The Ruling of the CA

On June 28, 2013, the court *a quo* promulgated the assailed Decision denying the appeal. The *fallo* reads:

WHEREFORE, premises considered, the appeal is **DENIED**. The decision dated May 25, 2011 of the Regional Trial Court Branch 47 in Bacolod City, convicting the accused-appellant of the offense charged and sentencing him to life imprisonment and to pay a fine of P500,000.00, is **AFFIRMED**.

SO ORDERED.

In upholding the RTC conviction, the CA ratiocinated that the prosecution's evidence was sufficient to afford the court a reliable assurance that the evidence presented is one and the same as those confiscated from accused-appellant. Hence, this appeal.

The Court's Ruling

We find for accused-appellant.

Sec. 21 of RA 9165 or the *Comprehensive Dangerous Drugs Act of 2002*, in part, requires:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(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 be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.

The case *People v. Musa*^[5] was instrumental for the CA in justifying leniency in the compliance with Sec. 21 of RA 9165. Relying on the case, the CA dispensed with several procedural requirements resulting in accused-appellant's conviction. As cited:

Since the "perfect chain" is almost always impossible to obtain, non-compliance with Sec. 21 of RA 9165, as stated in the Implementing Rules and Regulations, does not, without more, automatically render the seizure of the dangerous drug void, and evidence is admissible as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team.

In the present case, accused-appellants insist on the police officer's non-compliance with the chain of custody rule since there was "no physical inventory and photograph of the seized items were taken in their presence or in the presence of their counsel, a representative from the media and the Department of Justice and an elective official."

We, however, find these observations insignificant since a review of the