

SECOND DIVISION

[G.R. No. 207392, July 02, 2014]

PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. RAMIE ORTEGA Y KALBI, A.K.A AY-AY, ACCUSED-APPELLANT.

DECISION

PEREZ, J.:

We resolve the appeal filed by Ramie Ortega y Kalbi a.k.a Ay-ay (appellant) assailing the 19 November 2012 Decision^[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 00910-MIN which affirmed the Regional Trial Court's (RTC) 15 April 2010 Decision in Criminal Case No. 5659 (21355) finding the accused 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

Appellant was charged before RTC, Branch 13, Zamboanga City for violation of Section 5, R.A No. 9165 in an information that reads:

That on or about February 12, 2005, in the City of Zamboanga, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law to sell, deliver, transport, distribute or give away to another any dangerous drugs, did then and there willfully, unlawfully and feloniously, SELL AND DELIVER to P02 JAAFAR H. JAMBIRAN, a member of the PNP, who acted as buyer, two (2) heat sealed transparent plastic sachet each containing white crystalline substance having a total weight of 0.0206 gram, which when subjected to qualitative examination gave positive result to the tests for the presence of worth of METHAMPHETAMINE HYDROCHLORIDE (shabu), knowing the same to be a dangerous drug.^[2]

On 14 April 2005, appellant, assisted by his counsel, pleaded not guilty to the crime charged. Trial thereafter ensued.

The apprehending officers also filed a case against appellant's wife Merlinda Ortega (Len-len) and their cases were jointly heard. The case against Len-len was, however, dismissed after she filed a Demurrer to Evidence³ which the trial court granted in an Order⁴ dated 22 October 2008. The trial court ruled that the evidence against Len-len was inadmissible for being a product of an invalid search.

Version of the Prosecution

On 12 February 2005 at 2:10 P.M., a confidential informant tipped the Zamboanga City Police Office, Anti-Illegal Drugs Special Operations Task Force: *Tumba Droga* that a married couple named Ay-ay and Lenlen were selling *shabu* in their residence at Seaside, Lower Calarian, Zamboanga City.

A team was formed to conduct a buy-bust operation and P02 Jaafar Jambiran (P02 Jambiran) was tasked to act as the poseur-buyer, with P03 Alvin Ajuji (P03 Ajuji) as his immediate back-up. Five others were included in the team to serve as perimeter security.

At 3:10 P.M., the team proceeded to the target area with P02 Jambiran riding in tandem with the informant on his motorcycle while the rest of the team followed on board an L-300 van.

Upon arrival at the *locus criminis*, P02 Jambiran and the informant walked towards appellant's house. The informant pointed to the appellant, who was then seated on a bench outside his house. The informant asked appellant, in Tausug dialect, if he has stuff or *shabu* since P02 Jambiran wanted to purchase some of the stuff. Appellant replied by asking how much is he buying, to which informant answered P200.00. P02 Jambiran gave the marked two (2) one hundred peso (P100.00) bills in exchange for two (2) plastic sachets of *shabu*, which appellant took from his right pocket. P02 Jambiran scrutinized the items sold to him and afterwards executed the pre-arranged signal of removing his hat. This prompted P03 Ajuji to rush to the scene while P02 Jambiran grabbed appellant's hand and introduced himself as a policeman.

Forthwith, P02 Jambiran informed appellant of his constitutional rights and the fact the he violated R.A. No. 9165. After handcuffing appellant, P03 Ajuji conducted a body search on appellant and found two (2) one hundred peso (P100.00) bills inside his right pocket. When appellant's wife Len-len appeared, P03 Ajuji also searched her and found another two (2) plastic sachets of *shabu* in her right pocket. Using her cellphone, P02 Hilda Montuno (P02 Montuno) took pictures of appellant and Len-len before bringing them to the Zamboanga City Police Office.

At the Zamboanga City Police Office, P02 Jambiran turned over to the investigator, P03 Allan M. Benasing (P03 Benasing), two (2) plastic sachets of *shabu* taken from appellant, which he consequently marked with his initials "JJ." P03 Ajuji, on the other hand, turned over the marked money and the two (2) other plastic sachets of *shabu* taken from Len-len, which he also successively marked with his initials "AA." P02 Montuno also turned over the photographs she has taken of the appellant. These were all received pursuant to Complaint Assignment Sheet No. 1894. Upon receiving all the evidence, P03 Benasing also placed his initials "AB." P03 Benasing then prepared a request for laboratory examination for the plastic sachets, personally forwarded the request to the Crime Laboratory Office and these were received by the duty Police Non-Commissioned Officer (PNCO) thereat by placing the stamp of the said office at 4:00 PM of the same day.

On 14 February 2005, Police Senior InSpector Melvin Ledesma Manuel (PSI Manuel), a forensic chemist of the PNP Crime Laboratory, Camp Batalla, JRT Lim Boulevard, Zamboanga City examined the contents of the plastic sachets and issued Chemistry Report No. D-045-2005. The report yielded positive findings for methamphetamine

hydrochloride or *shabu*. Chemistry Report No. D-045-2005 was co-signed by Police Chief Inspector (PCI) Constante Sunio Sonido.^[5]

Version of the Defense

Appellant denied the accusations against him. He claimed that on 12 February 2005, policemen suddenly entered their house and accused him and his wife of selling *shabu*. He alleged that they were forced to hold plastic sachets at gunpoint while they were being photographed. Thereafter, he and his wife were brought and detained at the police station.^[6]

Ruling of the RTC

On 15 April 2010, the trial court rendered a Decision^[7] finding the accused guilty beyond reasonable doubt of the offense charged. Appellant was sentenced 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 of the prosecution successfully established the elements of illegal sale of drugs as accused was caught red-handed in a valid buy-bust operation. It noted that the defense of denial offered by the accused 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 affirmed *in toto* the ruling of the RTC. The appellate court agreed with the RTC in giving weight to the testimonies of the prosecution witnesses and in holding that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drugs.

Issue

Whether the court-*a-quo* gravely erred in finding the appellant guilty beyond reasonable doubt of the crime charged.^[8]

Our Ruling

The appeal is bereft of merit.

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the corpus delicti as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.^[9]

After a careful evaluation of the records, we find that these elements were clearly met. The prosecution's evidence positively identified the buyer as P02 Jambiran and the seller as appellant. Likewise, the prosecution presented in evidence the two sachets of *shabu* as the object of the sale and the 200.00 as consideration thereof.

Finally, the delivery of the *shabu* sold and its payment were clearly testified to by prosecution witnesses.

Appellant's defense which is anchored principally on denial cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. Appellant's defense is unavailing considering that he was caught in *flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.
[10]

Appellant submit that the trial court 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.^[11] Appellant alleged that there was lack of inventory and the marking of the items was not done in his presence, a representative of media, the Department of Justice (DOJ) and an elected official.^[12] Further, he averred that the confiscated items were only examined two days after it was submitted for laboratory examination. Appellant maintained that such failure casts doubt on the validity of his arrest and the identity of shabu allegedly seized and confiscated from him, forwarded by the apprehending officers to the investigating officer, to the crime laboratory for examination and later presented in court.

Relevant to appellant's case is the procedure to be followed in the custody and handling of the seized dangerous drugs as 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[.]

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.^[13] This Court has consistently ruled that even if the arresting